

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable William A. McKinnon, Circuit Court Judge

GONZALES REESE WARDLAW,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000730

APPENDIX

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2 County of Lexington Court of General Sessions
3
4
5 State)
6)
7 v.) Transcript of Record
8 Gonzales R. Wardlaw,) 12-GS-32-1261
9 Defendant.)

10 February 10 - 11 & 14, 2014
11 Lexington, South Carolina
12

13 B E F O R E:
14 The Honorable Thomas A. Russo, Sr., Judge; and
15 a jury.

16 A P P E A R A N C E S:
17 Samuel R. Hubbard, III, Deputy Solicitor
18 David Shawn Graham, Deputy Solicitor
19 Attorneys for the State
20 Elizabeth C. Fullwood, Assist. Public Defender
21 Attorney for the Defendant
22
23
24

25 Stacy L. Sheppard, RPR
Circuit Court Reporter

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1 (The following proceedings were held on
2 February 10, 2014.)

3 **THE COURT:** Ladies and gentlemen, we're going
4 to begin by drawing our first jury.

5 Mr. Hubbard.

6 **MR. HUBBARD:** Thank you, Your Honor. The State
7 calls indictment 2012-GS-32-01261, the State versus
8 Gonzales R. Wardlaw, an indictment for murder. It
9 has been true billed. I'm passing up a witness
10 list, Your Honor.

11 **THE COURT:** Thank you, sir.

12 Let me get the lawyers to step up real quick.
13 I have a quick question before I get started.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury panel, but
16 out of the hearing of the jury panel.)

17 **THE COURT:** Ladies and gentlemen, you've heard
18 Mr. Hubbard call the first case for trial and that
19 is State of South Carolina versus Gonzales R.
20 Wardlaw. And you heard that under indictment
21 2012-GS-32-1261, that indictment charges Mr. Wardlaw
22 with the offense of murder.

23 Now, let me, before I go any further, let me
24 explain to you briefly, an indictment, ladies and
25 gentlemen, is simply a piece of paper that carries

1 the allegations or the charge that the State has
2 made against the defendant. It is not in any way
3 evidence against the defendant. And the allegations
4 that are contained in this indictment are in no
5 way -- are in no way evidence against the defendant.
6 It is simply that, it is the allegations that the
7 State has made against a defendant.

8 In this case, the State is charging Mr. Wardlaw
9 with the offense of murder. And to that offense or
10 to that allegation, he has pled not guilty, and that
11 plea of not guilty places upon him the presumption
12 of innocence and it places upon the State the burden
13 of proof.

14 Now, having said that, I am going to read to
15 you what the allegations are so that you may be able
16 to answer any questions that I ask you with regards
17 to this matter. To this indictment, as I said,
18 Mr. Wardlaw has pled not guilty, but the allegations
19 that are made in this indictment are as follows:
20 That Gonzales R. Wardlaw did, in Lexington County,
21 on or about December the 29th of 2011, did willfully
22 and unlawfully kill one Thomas Hayfer -- is it
23 pronounced Hayfer?

24 **MR. GRAHAM:** Hoefer.

25 **THE COURT:** Did unlawfully kill one Thomas

1 Hoefer with malice aforethought, either expressed or
2 implied, by means of shooting the victim in the
3 chest and that the victim died as an approximate
4 result thereof in violation of section 16-3-10 of
5 the South Carolina Code of Laws, 1976, as amended.

6 Those are the allegations that the State has
7 made. Is there any member of the jury panel who
8 knows anything about this case based on what I just
9 shared with you was the contents of the indictment;
10 if so, please stand?

11 Thank you. There are none.

12 Now, ladies and gentlemen, I'm going to
13 recognize the attorneys and I'm going to have them
14 introduce themselves, if you'd please listen
15 carefully.

16 **MR. HUBBARD:** Thank you. My name is Rick
17 Hubbard. I'm a deputy solicitor here in Lexington.

18 **MR. GRAHAM:** My name is Shawn Graham, and I'm a
19 deputy solicitor here in Lexington County as well.

20 **THE COURT:** All right. And I'm going to start
21 with the attorneys for the State. Is there any
22 member of the jury panel who is related by blood,
23 connected by marriage or who has any close, business
24 or personal relationship with either Mr. Hubbard or
25 Mr. Graham or who has any close or personal

1 relationship with any member of the Eleventh Circuit
2 Solicitor's Office; if so, please stand?

3 Thank you. There are none.

4 Ms. Fullwood.

5 **MS. FULLWOOD:** Thank you.

6 Ladies and gentlemen, I'm Beth Fullwood. I'm
7 with the Eleventh Circuit Defender's Office. We
8 represent Mr. Wardlaw. This is Lisa Williams. We
9 work together. She's a paralegal, and she's going
10 to be assisting me in this case.

11 **THE COURT:** And if you would, get
12 Mr. Wardlaw --

13 **MS. FULLWOOD:** This is my client, Gonzales
14 Wardlaw.

15 **THE COURT:** All right. Thank you, folks. You
16 may have a seat.

17 Let me begin with Ms. Fullwood and her office.
18 Is there any member of the jury panel who is related
19 by blood, connected by marriage or who has any close
20 business or personal relationship with or who has
21 ever been represented either by Ms. Fullwood or any
22 member of the Lexington County Defender's Office; if
23 so, please stand?

24 Thank you. There are none.

25 You met Ms. Williams who works in that office.

1 Is there any member of the jury panel related by
2 blood, connected by marriage or who has any close
3 business or personal relationship with Ms. Williams;
4 if so, please stand?

5 Thank you. There are none.

6 You've met Mr. Wardlaw. Same question, is
7 there any member of the jury panel who is related by
8 blood, connected by marriage or who has any close
9 business or personal relationship with Mr. Wardlaw;
10 if so, please stand?

11 Thank you. There are none.

12 Now, ladies and gentlemen, that question that I
13 just asked you as it related to Mr. Wardlaw, that
14 is, related by blood, connected by marriage, any
15 close business or personal relationship, that's the
16 question that I'm going to ask you as I go through
17 this list of potential witnesses. There are several
18 folks on this list that are possible or potential
19 witnesses who may appear during the course of this
20 trial.

21 I'm going to go through that -- this list. As
22 I go through it, if you hear a name and that
23 question about related by blood, connected by
24 marriage, if that question applies for you to a name
25 that I call out, go ahead and stand and stand as

1 soon as you hear that name. But if you do stand,
2 continue to listen carefully because there are, as I
3 said, several names here that I'm going to be
4 calling out and it may be that you know more than
5 one of these folks. These are potential witnesses
6 that may or may not testify during the course of
7 this trial:

8 Darius Wade, Kevin Reese, William Hilton,
9 Amanda Beckham -- and as I go through this, if any
10 of these folks are in the courtroom, I'm going to
11 get them to stand briefly and face the jury panel
12 and then have a seat -- Shane Phillips, Donna
13 Martin, Brian Carroll, Robert Allman, Robert
14 McCrackin, Michael McMillin, George Wise, Brian
15 Zwolak, Paul Nelson, John Van Houten, Amy Mostella,
16 Angela Ladsen, Amy Stephens, James Green, Jan
17 Bryson, Amanda Webb, Pat Crooks, Gail Heath, Hope
18 Frick, Kevin Wilson, Charlie Sizemore, Marie
19 Wearing, Janice Ross, Brent Dempsey, Jason -- is it
20 Henz?

21 **MR. GRAHAM:** Hintz.

22 **THE COURT:** Hintz, Chase Frazier, Sarah Ezell.
23 Is it Shaquana Outing?

24 **MR. GRAHAM:** Shaquana, yes.

25 **THE COURT:** Shaquana Outing, Zachary Graham,

1 Andrew Graham, Ce Kia Bolton, Sharon Wardlaw,
2 Lindsey Glover, Tyheem Shell, Justin Branton, Anna
3 Brown, Sharonda Abney, Sonya Davis, James Vetter,
4 Cain Mayrant. Is it Sheralet Taylor?

5 **MR. GRAHAM:** Yes, sir.

6 **THE COURT:** Sheralet Taylor.

7 All right, sir. Who on that list did you --

8 **JUROR:** Brent Dempsey. I'm not sure if it's
9 the same Brent Dempsey. I went to high school with
10 a Brent Dempsey. I'm not sure that would be the
11 same person.

12 **MR. GRAHAM:** He's a paramedic with Lexington
13 County.

14 **JUROR:** Yes.

15 **THE COURT:** And your name, sir?

16 **JUROR:** Brian Hardy, juror 87.

17 **THE COURT:** All right. Mr. Hardy, the fact
18 that -- are you related to Mr. Dempsey or just know
19 him?

20 **JUROR:** No.

21 **THE COURT:** The fact that you have that
22 relationship or that you know Mr. Dempsey, if he
23 were to appear as a witness in this case, would that
24 in any way affect your ability to be fair and
25 impartial?

1 **JUROR:** No, sir, not at all.

2 **THE COURT:** Thank you, sir. You may have a
3 seat.

4 Sir, your name, please?

5 **JUROR:** Andy Barbee, juror number 7. I have a
6 close business colleague, Chuck Sizemore. He lives
7 in Florida.

8 **THE COURT:** Charlie Sizemore is with Clear
9 Talk?

10 **MR. GRAHAM:** He's with Clear Talk
11 Communications in Columbia.

12 **JUROR:** (Juror shook head.)

13 **THE COURT:** Thank you, sir.
14 Yes, sir, your name?

15 **JUROR:** Jerard Jureka, juror 107. I worked
16 with a Robert McCrackin several years ago at the
17 V.A. hospital.

18 **THE COURT:** All right. And is Mr. McCrackin
19 with the police department?

20 **MR. GRAHAM:** He's with the Columbia Police
21 Department.

22 **JUROR:** That's not the same.

23 **THE COURT:** That would not be the same. Okay.
24 Thank you, sir.

25 Anyone else?

1 (There was no response.)

2 **THE COURT:** All right. Ladies and gentlemen,
3 is there any member of the jury panel or a member of
4 your immediate family who is related by blood or
5 marriage or is close, personal friends with or a
6 social acquaintance with any member who is employed
7 with either the Eleventh Circuit Solicitor's Office,
8 the South Carolina Attorney General's Office, the
9 Lexington Defender's Office or any other law
10 enforcement agency; if so, please stand?

11 (Jurors stand.)

12 **THE COURT:** All right. And, sir, your name,
13 please?

14 **JUROR:** Chris Cerasaro, juror 30. My
15 brother-in-law is a corporal at Cayce.

16 **THE COURT:** All right. Would that, sir, in any
17 way affect your ability to be fair and impartial
18 giving both the State and the defense a fair trial?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you, sir. You may have a
21 seat.

22 Yes, ma'am, your name?

23 **JUROR:** Juror number 12.

24 **THE COURT:** All right. Ms. Black.

25 **JUROR:** My brother-in-law works for Lexington

1 County.

2 **THE COURT:** All right. Now, would that in any
3 way have any affect on your ability to be fair and
4 impartial?

5 **JUROR:** No.

6 **THE COURT:** Thank you very much, ma'am.
7 Yes, ma'am.

8 **JUROR:** My husband is a reserve deputy with
9 Lexington County.

10 **THE COURT:** And your name, ma'am?

11 **JUROR:** Lora Stein, juror 204.

12 **THE COURT:** All right. And, Ms. Stein, would
13 that in any way affect your ability to be fair and
14 impartial?

15 **JUROR:** (Juror shook head.)

16 **THE COURT:** Thank you, ma'am. You may have a
17 seat.

18 Ma'am, your name, please?

19 **JUROR:** Kelly Snipes. I'm juror 199.

20 **THE COURT:** All right.

21 **JUROR:** My best friend works for the
22 Solicitor's office in Richland County.

23 **THE COURT:** Over in Richland, okay. Would
24 that, ma'am, in any way affect your ability to be
25 fair and impartial?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you very much. You may have
3 a seat.

4 Yes, ma'am.

5 **JUROR:** Cindy Hook, juror 94. Church family
6 member with Lexington deputy, close friend.

7 **THE COURT:** Ma'am, and you said you're 94,
8 Ms. Hook. Would that in any way affect your ability
9 to be fair and impartial?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much, ma'am.

12 Yes, ma'am.

13 **JUROR:** Juror 139, Charlene McManus. My
14 husband's a retired Lexington County Deputy Sheriff.

15 **THE COURT:** All right. And would that, ma'am,
16 in any way affect your ability to be fair and
17 impartial?

18 **JUROR:** No.

19 **THE COURT:** Thank you very much. You may have
20 a seat.

21 **JUROR:** Juror 108, Jayla Keese. My mother is a
22 retired police officer in Richland and Columbia and
23 SLED.

24 **THE COURT:** Would that, Ms. Keese, in any way
25 affect your ability to give both the State and the

1 defense a fair trial?

2 **JUROR:** No, sir.

3 **THE COURT:** Thank you, ma'am. You may have a
4 seat.

5 Yes, sir.

6 **JUROR:** Christopher Stewart, juror 205. My
7 brother-in-law is a detective with the West Columbia
8 Police Department.

9 **THE COURT:** All right, sir. And this is juror
10 205. Mr. Stewart, would that in any way affect your
11 ability to be fair and impartial?

12 **JUROR:** No, it would not.

13 **THE COURT:** Thank you, sir. You may have a
14 seat.

15 Yes, sir.

16 **JUROR:** Your Honor, Andy Barbee, juror number 7
17 again. A lady who works with the North Carolina
18 Department of Corrections lives with me presently.

19 **THE COURT:** All right. Would that in any way,
20 sir, affect your ability to be fair and impartial?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you so much, appreciate that.

23 Is there any member of the jury panel who has
24 ever been employed, yourself, been employed by any
25 state, local, federal or military law enforcement

1 agency; if so, please stand?

2 (Jurors stand.)

3 **JUROR:** I used to be employed with SLED.

4 **THE COURT:** And your name, ma'am?

5 **JUROR:** Linda Lee, juror 114.

6 **THE COURT:** All right. And, Ms. Lee, would
7 that in any way affect your ability to be fair and
8 impartial?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you, ma'am.

11 Sir, your name, please?

12 **JUROR:** James Whitaker, juror number 215. I
13 used to work for Lexington County Sheriff's
14 Department.

15 **THE COURT:** All right, sir. And would that in
16 any way affect your ability to be fair and
17 impartial?

18 **JUROR:** No, Your Honor.

19 **THE COURT:** Thank you, sir.

20 Is there any member --

21 (Juror stands.)

22 **THE COURT:** I'm sorry, sir. Your name, please?

23 **JUROR:** Hartwell Merchant. I worked for the
24 department of transportation, number 141.

25 **THE COURT:** All right, sir.

1 **JUROR:** Back when we were together in the same
2 department, the highway patrol was part of the
3 highway department, that's all.

4 **THE COURT:** Would that in any way have any
5 affect on your ability to be fair and impartial,
6 sir?

7 **JUROR:** No.

8 **THE COURT:** Thank you, sir. You may have a
9 seat.

10 Ladies and gentlemen, is there any member of
11 the jury panel who is a contributor, either through
12 financial means or by volunteering of your time, a
13 contributor to any organization that has, as its
14 primary purpose, the prevention of crime or advocacy
15 of victim's rights?

16 Some examples of these organizations, although
17 this isn't totally inclusive, but some examples of
18 these types of organizations would be MADD, Mothers
19 Against Drunk Driving; SADD, Students Against Drunk
20 Driving; CAVE, Citizens Against Violence; the South
21 Carolina Troopers Association; the Paternal Order of
22 Police; South Carolina Sheriff's Association, any
23 types of these organizations. If you are a
24 contributor, either by way of financial means or by
25 volunteering of your time, would you please stand?

1 (Jurors stand.)

2 **THE COURT:** All right. And I'm going to get
3 you to give me your name and number again, please.

4 **JUROR:** Juror number 139, Charlene McManus.
5 South Carolina Law Enforcement Officer's
6 Association.

7 **THE COURT:** And the fact that you're a
8 contributor to that organization, would that in any
9 way affect your ability to be fair and impartial?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you, ma'am.
12 Yes, ma'am.

13 **JUROR:** Brianne Siciliano, juror number 190.
14 Sister Care.

15 **THE COURT:** And would that, ma'am, in any way
16 affect your ability to be fair and impartial?

17 **JUROR:** No, sir.

18 **THE COURT:** Thank you.
19 Sir?

20 **JUROR:** Number 18. MADD, Mother's Against
21 Drunk Driving.

22 **THE COURT:** All right, sir. And this is juror
23 number 18, Mr. Brown.

24 Mr. Brown, would that in any way affect your
25 ability to be fair and impartial?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you, sir.

3 **JUROR:** Number 138, James McGovern. I've
4 contributed to various law enforcement requests for
5 funds.

6 **THE COURT:** Mr. McGovern, would that in any way
7 affect your ability to be fair and impartial, sir?

8 **JUROR:** No, Your Honor.

9 **THE COURT:** Thank you very much.
10 Yes, sir.

11 **JUROR:** My name is Hartwell Merchant. I'm
12 juror number 141. I have contributed to MADD and to
13 sheriff's -- South Carolina Sheriff's Department.

14 **THE COURT:** Mr. Merchant, would that in any way
15 affect your ability to be fair and impartial, sir?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you very much. You may have
18 a seat.

19 Yes, ma'am.

20 **JUROR:** Juror number 169, Sofia Pinder-Francis.

21 **THE COURT:** Yes, ma'am.

22 **JUROR:** I work...

23 **COURT REPORTER:** I couldn't hear her.

24 **THE COURT:** Would you mind repeating that
25 again? She didn't get that.

1 **JUROR:** I actually work on a state -- short
2 step program {phonetic}.

3 **THE COURT:** Would that in any way affect your
4 ability to be fair and impartial, ma'am?

5 **JUROR:** No, Your Honor.

6 **THE COURT:** Thank you very much.

7 Ladies and gentlemen, is there any member of
8 the jury panel or member of your family or close
9 friend ever been either a victim of a violent crime
10 or themselves charged with a violent crime; if so,
11 please stand?

12 (Jurors stand.)

13 **THE COURT:** All right. And we'll start here.
14 Sir, your name and number?

15 **JUROR:** Juror number 87, Brian Hardy. Roughly,
16 a year and a half, two years ago, my uncle was hit
17 and killed while walking home to his --

18 **THE COURT:** Okay. Would that in any way,
19 Mr. Hardy, have any affect on your ability to be
20 fair and impartial?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you, sir.

23 What I'm going to do, because, folks, I want
24 you to, you know, feel comfortable and not be
25 nervous or anything, I'm not going to ask any

1 details, okay, about -- what I really need to know
2 is whether it was yourself or a member of your
3 family or a close friend. And I need to know either
4 that they have been a victim of a violent crime or
5 charged with one, okay.

6 Yes, ma'am, your number?

7 **JUROR:** Juror 139, Charlene McManus, victim.

8 **THE COURT:** And was it yourself or a family
9 member?

10 **JUROR:** Myself.

11 **THE COURT:** And would that, ma'am, in any way
12 have any affect on your ability to be fair and
13 impartial?

14 **JUROR:** No, it wouldn't.

15 **THE COURT:** Thank you very much. You may have
16 a seat.

17 I'm going to start on the far end over here,
18 yes, ma'am.

19 **JUROR:** Number 15, Ann Bradley. I believe my
20 husband's nephew was charged with something. I
21 don't have contact with him, but I believe he was
22 charged with something.

23 **THE COURT:** Would that, Ms. Bradley, in any way
24 affect your ability to be fair and impartial?

25 **JUROR:** No.

1 **THE COURT:** Thank you.

2 Yes, sir.

3 **JUROR:** 134, my wife was a victim.

4 **THE COURT:** All right. And, sir, would that in
5 any way affect your ability to be fair and
6 impartial, sir?

7 **JUROR:** No, sir.

8 **THE COURT:** Thank you.

9 Yes, sir.

10 **JUROR:** Robbie Stabler, 202.

11 **THE COURT:** All right. Yourself or a member of
12 your family?

13 **JUROR:** My daughter was a victim.

14 **THE COURT:** And, sir, would that in any way
15 affect your ability to be fair and impartial?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you, sir. You may have a
18 seat.

19 Yes, ma'am.

20 **JUROR:** 101, Tanisha Jenkins. And a victim,
21 family member.

22 **THE COURT:** All right. And, Ms. Jenkins, would
23 that in any way affect your ability to be fair and
24 impartial, ma'am?

25 **JUROR:** No.

1 **THE COURT:** Thank you.

2 Yes, ma'am.

3 **JUROR:** Juror 17, Karen Brose, family member
4 charged.

5 **THE COURT:** All right. And, ma'am, would that
6 in any way affect your ability to be fair and
7 impartial?

8 **JUROR:** No.

9 **THE COURT:** Thank you, ma'am. You may have a
10 seat.

11 **JUROR:** It's my brother, he was charged, but it
12 was found self-defense.

13 **THE COURT:** Your name, please?

14 **JUROR:** Brenda, I'm juror 125.

15 **THE COURT:** 125?

16 **JUROR:** Uh-huh.

17 **THE COURT:** All right. And, Ms. Mack, would
18 that in any way affect your ability to be fair and
19 impartial?

20 **JUROR:** No.

21 **THE COURT:** Thank you, ma'am. You may have a
22 seat.

23 Yes, ma'am.

24 **JUROR:** Juror 216, Lucille White, family member
25 incarcerated.

1 **THE COURT:** All right. And, Ms. White, would
2 that in any way affect your ability to be fair and
3 impartial, ma'am?

4 **JUROR:** No.

5 **THE COURT:** Thank you, Ms. White. You may have
6 a seat.

7 Yes, ma'am.

8 **JUROR:** I'm Donna Padgett, juror 161. I had a
9 family member who was a victim.

10 **THE COURT:** All right. And, Ms. Padgett, would
11 that in any way affect your ability to be fair and
12 impartial?

13 **JUROR:** No.

14 **THE COURT:** Thank you very much, ma'am.

15 Is there any member of the jury panel who has
16 lost a family member or a close personal friend as a
17 result of a homicide; if so, please stand?

18 (Jurors stand.)

19 **THE COURT:** All right. Sir, I'm going to start
20 over here. Your name, please?

21 **JUROR:** Aaron Inabinet, juror 99. I had a
22 close friend that was murdered.

23 **THE COURT:** All right, sir. Mr. Inabinet,
24 would that in any way affect your ability to be fair
25 and impartial?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you, sir. You may have a
3 seat.

4 **JUROR:** Juror 101, Tanisha Jenkins. My uncle
5 was murdered.

6 **THE COURT:** All right. And, Ms. Jenkins, would
7 that in any way affect your ability to be fair and
8 impartial giving both the State and the defense a
9 fair trial?

10 **JUROR:** No.

11 **THE COURT:** Thank you, ma'am.

12 Ladies and gentlemen, if it hasn't come to your
13 realization yet, my purpose in asking these
14 questions is to determine your ability to be fair
15 and impartial. As you have seen through all of
16 these questions, that the follow-up question has
17 always been, Would that situation, whatever it was,
18 have any affect on your ability to be fair and
19 impartial?

20 Our purpose and our goal any time we try a
21 case, whether it's here in criminal court or in
22 civil court, is to impanel a jury that can put aside
23 any outside influences and judge a case and decide a
24 case based solely on the evidence and the law that
25 is presented during the course of this trial and on

1 nothing else. That's the goal. That's our purpose.

2 And so we go through these questions to
3 determine if anyone would have a difficult time
4 doing that based on experiences outside the court.
5 And I could probably ask questions all day to try to
6 determine that, but maybe the best way to go about
7 it is to simply ask this: Is there any member of
8 the jury panel who knows of any reason why you would
9 not be able to be fair and impartial in listening to
10 the testimony and giving both the State of South
11 Carolina and the defendant at the bar a fair and
12 impartial trial? If there's any member of the jury
13 panel that knows of any reason why you would not be
14 able to do that, please stand.

15 Thank you. There are none.

16 Are there any additional questions or voir dire
17 from the State?

18 **MR. HUBBARD:** No, sir, Your Honor.

19 **THE COURT:** Anything additional from the
20 defense?

21 **MS. FULLWOOD:** No, Your Honor.

22 **THE COURT:** Now, ladies and gentlemen, let me
23 explain to you how we go about selecting juries in
24 criminal court. It's a little different than what
25 we do in civil court.

1 What's -- your names, everyone who's here
2 today, your name appears on this list of jurors.
3 And your names appear pretty much in alphabetical
4 order. And you've been assigned a juror number and
5 that number correlates to where you appear on this
6 alphabetical list. We have a computer system in
7 place now where we can punch a button and this
8 program takes that list of jurors, which is
9 alphabetical, and it completely reorders that list
10 and it reorders that list randomly. So I may appear
11 on the alphabetical list as Tommy Russo, juror 134.
12 And when this new list gets kicked out, I may be
13 Tommy Russo, juror number 14. So it just completely
14 reorders the list.

15 Then what happens is each side has what we call
16 preemptory strikes. In other words, each side gets
17 to strike a certain number of jurors for whatever
18 reason they decide to do that.

19 And so what goes on is the computer kicks out
20 this list, we take that list and then Madame Clerk
21 will start at the top of the new list and call the
22 first name that appears on that list. If your name
23 is called, when you hear your name called, if you
24 would come forward, come through those swinging
25 doors here and stand in front of this little cabinet

1 right here and then just face the back of the
2 courtroom just as I'm doing. And if you'll stand in
3 front of that cabinet and face the back of the
4 courtroom, then the clerk will inquire first of the
5 State words along the lines, What say you for the
6 State?

7 The State can either excuse you, and if they
8 excuse you, you'll go back and have a seat, or they
9 can present you, and if they present you, you'll
10 remain standing. And then she'll inquire of the
11 defense words along the lines, What say you for the
12 defense? The defense has the option, they can
13 either excuse you, and if they excuse you, you'll go
14 back and have a seat, or they can seat you, and if
15 they seat you, then you'll come around and have a
16 seat in the jury box. We will go through that
17 process until we've selected a jury.

18 Now, ladies and gentlemen, there's no way of
19 knowing, if your name is called, whether or not the
20 State or the defense is going to accept or excuse
21 you. So if your name is called, please bring with
22 you any items that you -- any personal items that
23 you brought to court with you today, whether it be a
24 pocketbook, a jacket, a reading book or anything.
25 Whatever you brought with you, bring that with you

1 when your name is called because it may be that
2 you're not going to return to your seat and that
3 you're going to have a seat over here, okay.

4 So is the State ready to proceed with the jury
5 selection?

6 **MR. HUBBARD:** Yes, sir, Your Honor.

7 **THE COURT:** Defense ready?

8 **MS. FULLWOOD:** Yes, Your Honor.

9 **THE COURT:** Hope, you're ready?

10 **THE CLERK:** Proceed, Your Honor?

11 **THE COURT:** All right.

12 **THE CLERK:** Number 71, Sandra Foster.

13 (Whereupon, Sandra K. Foster, a white
14 female, was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. HUBBARD:** Please present Ms. Foster.

17 **THE CLERK:** What say you for the defense?

18 **MS. FULLWOOD:** Please excuse the juror from
19 this trial.

20 **THE CLERK:** Return to your seat, please, ma'am.
21 Number 15, Ann Bradley.

22 (Whereupon, Ann M. Bradley, a white female,
23 was called forward.)

24 **THE CLERK:** What say you for the State?

25 **MR. HUBBARD:** Please present Ms. Bradley.

1 **THE CLERK:** What say you for the defense?

2 **MS. FULLWOOD:** Please swear Ms. Bradley.

3 **THE CLERK:** Have a seat in the jury box, ma'am.
4 Number 129, Angela Marklin.

5 (Whereupon, Angela R. Marklin, a white
6 female, was called forward.)

7 **THE CLERK:** What say you for the State?

8 **MR. HUBBARD:** Please present Ms. Marklin.

9 **THE CLERK:** What say you for the defense?

10 **MS. FULLWOOD:** Please swear Ms. Marklin.

11 **THE CLERK:** Have a seat in the jury box, ma'am.
12 72, Nancy Frey.

13 (Whereupon, Nancy M. Frey, a white female,
14 was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. HUBBARD:** Please present Ms. Frey.

17 **THE CLERK:** What say you for the defense?

18 **MS. FULLWOOD:** Please swear Ms. Frey.

19 **THE CLERK:** Have a seat in the jury box, ma'am.
20 160, Elizabeth Owens.

21 (Whereupon, Elizabeth M. Owens, a white
22 female, was called forward.)

23 **THE CLERK:** What say you for the State?

24 **MR. HUBBARD:** Please present Ms. Owens.

25 **THE CLERK:** What say you for the defense?

1 **MS. FULLWOOD:** Please swear Ms. Owens.

2 **THE CLERK:** Have a seat in the jury box, ma'am.

3 Number 135, Rhonda McCartha.

4 (Whereupon, Rhonda P. McCartha, a white
5 female, was called forward.)

6 **THE CLERK:** What say you for the State?

7 **MR. HUBBARD:** Please present Ms. McCartha.

8 **THE CLERK:** What say you for the defense?

9 **MS. FULLWOOD:** Please swear Ms. McCartha.

10 **THE CLERK:** Have a seat in the jury box, ma'am.

11 Number 205, Christopher Stewart.

12 (Whereupon, Christopher M. Stewart, a white
13 male, was called forward.)

14 **THE CLERK:** What say you for the State?

15 **MR. HUBBARD:** Please present Mr. Stewart.

16 **THE CLERK:** What say you for the defense?

17 **MS. FULLWOOD:** Please excuse Mr. Stewart.

18 **THE CLERK:** Return to your seat, please, sir.

19 29, Tommy Cave.

20 (Whereupon, Tommy M. Cave, a white male, was
21 called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. HUBBARD:** Please present Mr. Cave.

24 **THE CLERK:** What say you for the defense?

25 **MS. FULLWOOD:** Please swear Mr. Cave.

1 **THE CLERK:** Have a seat in the jury box, sir.
2 52, Martha Dowd.

3 (Whereupon, Martha A. Dowd, a white female,
4 was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. HUBBARD:** Please present Ms. Dowd.

7 **THE CLERK:** What say you for the State {sic}?

8 **MS. FULLWOOD:** Please swear Ms. Dowd.

9 **THE CLERK:** Have a seat in the jury box, ma'am.
10 94, Cynthia Hook.

11 (Whereupon, Cynthia M. Hook, a white female,
12 was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. HUBBARD:** Please present Ms. Hook.

15 **THE CLERK:** What say you for the defense?

16 **MS. FULLWOOD:** Please excuse Ms. Hook.

17 **THE CLERK:** Return to your seat, please, ma'am.
18 Number 30, Christopher Cerasaro.

19 (Whereupon, Christopher Cerasaro, a white
20 male, was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. HUBBARD:** Please present Mr. Cerasaro.

23 **THE CLERK:** What say you for the State -- I
24 mean, excuse me -- the defense?

25 **MS. FULLWOOD:** Please excuse Mr. Cerasaro.

1 **THE CLERK:** Return to your seat, please.

2 Number 183, Viola Scipio.

3 (Whereupon, Viola H. Scipio, a black female,
4 was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. HUBBARD:** Please present Ms. Scipio.

7 **THE CLERK:** What say you for the defense?

8 **MS. FULLWOOD:** Please swear Ms. Scipio.

9 **THE CLERK:** Have a seat in the jury box, ma'am.
10 141, Guy Merchant.

11 (Whereupon, Guy Hartwell Merchant, a white
12 male, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. HUBBARD:** Please present Mr. Merchant.

15 **THE CLERK:** What say you for the defense?

16 **MS. FULLWOOD:** Please excuse Mr. Merchant.

17 **THE CLERK:** Return to your seat, please, sir.
18 Number 204, Lora Stein.

19 (Whereupon, Lora Stein, a white female, was
20 called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. HUBBARD:** Please present Ms. Stein.

23 **THE CLERK:** What say you for the defense?

24 **MS. FULLWOOD:** Please excuse Ms. Stein.

25 **THE CLERK:** Return to your seat, please, ma'am.

1 93, Robert Hicks.

2 (Whereupon, Robert D. Hicks, a white male,
3 was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. HUBBARD:** Please present Mr. Hicks.

6 **THE CLERK:** What say you for the defense?

7 **MS. FULLWOOD:** Please swear Mr. Hicks.

8 **THE CLERK:** Have a seat in the jury box, sir.

9 152, Sean Murray.

10 (Whereupon, Sean P. Murray, a white male,
11 was called forward.)

12 **THE CLERK:** What say you for the State?

13 **MR. HUBBARD:** Please present Mr. Murray.

14 **THE CLERK:** What say you for the defense?

15 **MS. FULLWOOD:** Please swear Mr. Murray.

16 **THE CLERK:** Have a seat in the jury box, sir.

17 Number 40, Kristina Copeland.

18 (Whereupon, Kristina C. Copeland, a white
19 female, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MR. HUBBARD:** Please present Ms. Copeland.

22 **THE CLERK:** What say you for the defense?

23 **MS. FULLWOOD:** Please swear Ms. Copeland.

24 **THE CLERK:** Have a seat in the jury box, ma'am.

25 218, Lana Wilkins.

1 (Whereupon, Lana W. Wilkins, a white female,
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. HUBBARD:** Please present Ms. Wilkins.

5 **THE CLERK:** What say you for the defense?

6 **MS. FULLWOOD:** Please swear Ms. Wilkins.

7 **THE CLERK:** Have a seat in the jury box, ma'am.
8 Alternates, Your Honor?

9 **THE COURT:** Two.

10 **THE CLERK:** Number 76, Mandy Garron.

11 (Whereupon, Mandy S. Garron, a white female,
12 was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. HUBBARD:** Please present Ms. Garron.

15 **THE CLERK:** What say you for the defense?

16 **MS. FULLWOOD:** Please swear Ms. Garron.

17 **THE CLERK:** Have a seat in the jury box, ma'am.
18 173, Elton Poole.

19 (Whereupon, Elton K. Poole, a white male,
20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. HUBBARD:** Please present Mr. Poole.

23 **THE CLERK:** What say you for the defense?

24 **MS. FULLWOOD:** Please swear Mr. Poole.

25 **THE CLERK:** Have a seat in the jury box, sir.

1 That's alternates one and two, Your Honor.

2 **THE COURT:** Are there any motions regarding the
3 jury selection from the State?

4 **MR. HUBBARD:** No, sir, Your Honor.

5 **THE COURT:** Anything from the defense?

6 **MS. FULLWOOD:** None, Your Honor.

7 **THE COURT:** All right. Let me get y'all real
8 quick up here.

9 (Whereupon, a bench conference was held off
10 the record, in the presence of the jury, but out of
11 the hearing of the jury.)

12 **THE COURT:** All right. Folks, those of you
13 that remain in the jury pool, I'm going to excuse
14 you now for the balance of the day and for tomorrow,
15 and I don't know from then on. It might be the rest
16 of the week, it may not be.

17 On the little card that you'd gotten, there's a
18 phone number and there's also a web site. You can
19 use either one of those resources. And I'm going to
20 ask, if you would, to either use the phone number or
21 the web site, but not to access either until after
22 six o'clock tomorrow night, okay. And then there
23 will be either a recording, I used to tell people
24 that Hope stays up here 24 hours a day and she would
25 answer the phone, but she wouldn't agree to do that

1 so, but there'll be a recording or there will be
2 information on the web site that we have
3 instructions for you as the jury panel, and it'll
4 either have you come back at a certain time or it'll
5 have you either call back at a certain time or it
6 may excuse you for the week. I just don't know at
7 this point what that instruction will be.

8 So you don't have to worry about it this
9 evening, but if tomorrow night after six o'clock, if
10 you would access one of those two sources to
11 determine what your instructions are next, I would
12 greatly appreciate that, okay.

13 So if everyone else just remain seated.
14 Members of the jury panel, you're excused and just
15 call back after 6:00 tomorrow night.

16 (The remaining jury panel was excused.)

17 **THE COURT:** And, folks, I'm going to talk with
18 you while they're going out because in just a little
19 bit, I'm going to excuse you for the balance of
20 today, but I know I need you back tomorrow, okay, so
21 -- and I'll give you a little bit more information
22 about that. But there are -- we've got some
23 pretrial matters that we need to take up and rather
24 than have you sit back in the jury room, although we
25 have a comfortable jury room, you know, I'm not --

1 I'm trying to be sensitive about your time and I
2 don't want to waste your time, so we --

3 I've talked with the attorneys and what we're
4 going to do is we're going to use this afternoon to
5 deal with pretrial matters that hopefully would make
6 the trial go a little quicker because we'll take
7 care of those matters ahead of time and then we'll
8 begin the trial first thing in the morning. So I'm
9 going to excuse you, but I need to send you with a
10 little bit more instruction than I sent those folks.

11 You are the folks that make up this panel and
12 you will decide this case. And so it is very
13 important that you do everything within your power
14 to protect your ability to be fair and impartial,
15 and that means that you have no conversation with
16 anybody about this case. You don't allow anyone to
17 have conversation with you.

18 If anyone does approach you and try to talk
19 with you about the case or ask you any questions
20 about the case, you let them know that you're a
21 juror and you're not allowed to talk, and that
22 should end that conversation. If it doesn't, if
23 they persist on talking, then you let me know who
24 that person is and I can assure you we'll make sure
25 that that doesn't occur again.

1 Often times it's people who are just curious.
2 We don't have that many, that I can recall,
3 complaints about people trying to talk to a jury.
4 Usually it's people who are curious and they're not
5 aware that it's improper to talk with you. But once
6 you let them know that it's not proper for you to
7 discuss the case, that usually would end it.

8 Now, you're about to go home to -- back to
9 family, friends or loved ones, whoever, and they're
10 going to be curious as to whether or not you were
11 selected on a case. And it's fine to let them know
12 that you have been selected and that you have to be
13 back in the morning.

14 Now, if they're anything like my wife, they're
15 going to -- that's not going to be enough. They're
16 going to want to know, well, what kind of case is
17 it, who does it involve, which is natural, I'd be
18 the same way. That's where you've got to draw the
19 line, okay.

20 Saying something as innocent as, you know, I
21 can't tell you who it's about, it's just a murder
22 trial, that could possibly elicit a response that
23 may affect your ability to be fair and impartial, or
24 if you said something as simple as you didn't -- you
25 just said, it involves a young man whose name is

1 Wardlaw, that could elicit a response that may
2 affect your ability to be fair and impartial.

3 So what I ask jurors to do always is this: You
4 can tell them that you're on a jury and that you
5 have to be back in the morning. At that point, then
6 you tell them, I can't tell you anything about the
7 case, but what I can tell you is when it's over,
8 I'll then tell you everything you want to know, but
9 until that point, I'm not allowed to have any
10 conversation and so please respect that. And that
11 usually should take care of it.

12 Also, I tell folks all the time we live in a
13 day and age with computers that people can Google
14 stuff and look up stuff, and there's not even words
15 to describe how improper that would be for you to do
16 anything like that. You're not to do any private
17 investigation on your own because you are going to
18 be sworn to try this case and to decide this case
19 based solely on the evidence and the witnesses and
20 the testimony and the exhibits that come in during
21 the course of this trial in this courtroom and on
22 nothing else. So, please, don't make any efforts to
23 access something or look up something or whatever.

24 I tell juries all the time, go home, enjoy your
25 afternoon, your evening, relax. If you can, try to

1 get a good night sleep. Jury service, I think
2 you'll find, is not physically taxing from a
3 muscular standpoint, but it can be from a mental
4 standpoint. So it would really behoove you to go
5 home and get a good night's rest so that when you
6 come back in the morning, you'll be well rested and
7 in a good frame of mind to listen to the testimony
8 and to the case as it unfolds, okay.

9 Now, one last little charge to you is when you
10 do reconvene tomorrow, that admonition that I gave
11 you to not talk about the case with anyone, that
12 includes amongst yourselves.

13 Now, sometimes jurors will look at me a little
14 bit funny because their thought is, well, I thought
15 that was our job; I thought that's what we were
16 supposed to do. Well, it is, but not yet. You're
17 not to have any conversation with another person
18 about this case until all of the evidence has been
19 presented, the lawyers have had an opportunity to
20 address you with their closing remarks and I've
21 given you the charge on the law. Only then are you
22 going to be in a position to discuss the case.

23 So between now and when that time comes, you're
24 not to talk with anyone, even amongst yourselves,
25 about this case, okay. And I tell people all the

1 time when you leave here today, when you get to come
2 back in the morning, you shouldn't know anything
3 more about this case than you know right now, okay.

4 Now, when you leave here, and you're about to
5 go, I'm going to ask you to follow the bailiff and
6 he's going to show you where your jury room is.
7 When you come back in the morning, you'll report
8 back and report back straight to that jury room,
9 okay, and there'll be somebody out here to guide you
10 back there. I will ask you, if you would, to be
11 back at 9:30. We'll get started at that point.

12 Now, I need you to not be like my wife in this
13 respect: If we have to be somewhere across town at
14 seven o'clock, my wife thinks we're on time if we
15 leave the house at seven o'clock. Well, we're
16 clearly late. Don't leave your house at 9:30 to be
17 here tomorrow, try to leave early enough to take
18 into consideration traffic and parking and all of
19 that. So, please, if you would, be back at 9:30.
20 And so if you'd be back here at 9:30, when everyone
21 gets reconvened, we'll then begin the trial, all
22 right.

23 So everyone else please remain seated.

24 And, ladies and gentlemen, I'm going to get you
25 to file out, see where your jury room is and then

1 you're free to go.

2 (The jury was excused for the day.)

3 **THE COURT:** All right. Y'all need a few
4 minutes to get some things?

5 **MR. HUBBARD:** Yes, sir.

6 **THE COURT:** All right. Go ahead and take a few
7 minutes to get what you need and then we'll get
8 started with some pretrial matters, okay.

9 **MR. HUBBARD:** Thank you, Your Honor.

10 **THE COURT:** All right. We'll be in recess then
11 for a few minutes while y'all gather that stuff
12 together.

13 (Brief Recess.)

14 **THE COURT:** All right. We're back on the
15 record in the case of the State versus Wardlaw.
16 Jury selection has been completed. I have excused
17 the panel to return tomorrow morning and we're going
18 to take up some pretrial matters at this time. I'll
19 recognize Mr. Graham.

20 **MR. GRAHAM:** Thank you, Your Honor. The State
21 has a Jackson v. Denno hearing that we need to have
22 heard. We have two witnesses for the state.

23 **THE COURT:** All right. You may proceed then.

24 **MR. GRAHAM:** The State would call Sergeant
25 Kevin Reese to the stand.

1 **THE COURT:** All right. Sergeant Reese, if
2 you'd please come around to be sworn.

3 KEVIN REESE,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Once you're seated, state your full
6 name, spelling your last on the record, please.

7 **THE WITNESS:** Good morning, Your Honor.
8 My name is Kevin Reese, R-e-e-s-e.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 **Q** Sergeant, where are you currently employed?

12 **A** City of Columbia Police Department.

13 **Q** And how long have you been employed with the
14 City of Columbia Police Department?

15 **A** Started in 1980, left in '85, came back in '91.
16 I've been there since.

17 **Q** Currently as a sergeant, what are your job
18 responsibilities?

19 **A** Right now I've just been assigned about four
20 weeks ago to the criminal gang unit and I supervise
21 the gang unit.

22 **Q** Back in December of -- well, in January of 2012
23 and December of 2011, when this murder occurred,
24 were you the lead investigator on this case?

25 **A** Yes, sir.

1 **Q** Did you have an opportunity to interview the
2 defendant, Gonzales Wardlaw?

3 **A** I did.

4 **Q** Do you see him in the courtroom today?

5 **A** Yes, sir. He's sitting at the defense table in
6 the white shirt.

7 **Q** Do you remember the circumstances of your
8 interview with him, where were you and when was it?

9 **A** Yes, sir. At the interview room? Yes, sir.

10 **Q** Yes, sir. Did you bring a advice of rights
11 form that you used with him? Do you have the
12 original with you?

13 **A** I've got to get it out of the file.

14 **Q** (Mr. Graham hands documents to witness.)

15 **A** I have it.

16 **Q** Sergeant, where did that interview occur?

17 **A** The interview occurred on January the 19th,
18 2012, at the Number 1 Justice Square, which is the
19 police department.

20 **Q** Do you remember what time the advice of rights
21 were given?

22 **A** At 11:17 a.m.

23 **Q** The defendant had been arrested just
24 approximately 30 minutes before this interview; is
25 that correct?

1 **A** That's correct.

2 **Q** At the time he was arrested, he was actually
3 arrested on a probation warrant; is that correct?

4 **A** That's correct.

5 **Q** And did he agree to come to headquarters and
6 speak with you?

7 **A** Yes, sir, he did.

8 **Q** When you saw him, did he appear to be under the
9 alcohol -- under the influence of alcohol or drugs?

10 **A** No, sir, he did not.

11 **Q** Did he understand what was going on?

12 **A** I'm sure he did, yes, sir.

13 **Q** Did you threaten him in any way to get him to
14 speak with you?

15 **A** No, sir.

16 **Q** Did you coerce him in any way to get him to
17 speak?

18 **A** No, sir.

19 **Q** Did you make any promises to him that if he
20 spoke, something good would happen for him?

21 **A** No, sir.

22 **Q** Did you give him any hope of reward?

23 **A** No, sir.

24 **Q** Did you go over his constitutional rights with
25 him?

1 **A** I did.

2 **Q** And did you have something to -- in writing
3 that you actually did that with?

4 **A** Yes, sir, I did.

5 **Q** And is that what you have in front of you right
6 now?

7 **A** That's correct.

8 **Q** And that's the actual document?

9 **A** That's the actual document.

10 **MR. GRAHAM:** Your Honor, the State would mark
11 this as a court's exhibit at this -- or actually
12 mark it for ID, I guess.

13 **THE COURT:** We'll mark it for ID.

14 **MS. FULLWOOD:** No objection, Your Honor.

15 **THE COURT:** All right. That'll be State's 1
16 for identification.

17 (State's Exhibit Number 1, advice of rights
18 form, marked for identification.)

19 BY MR. GRAHAM:

20 **Q** Just for display purposes, I'm going to show
21 you another document and ask if that's a copy of
22 what you're looking at that we just marked as
23 State's Number 1 for identification?

24 **A** This is the copy, yes, sir.

25 **Q** How did you go about advising Mr. Wardlaw of

1 his rights?

2 **A** I read Mr. Wardlaw what's on the rights form.
3 After each right, I -- I actually read everything on
4 it, on the form. And after each right, I asked him
5 if he understood it. And when he affirmed that he
6 did understand it, I had him to initial each line.

7 **Q** So, specifically, it starts off after -- I'm
8 assuming -- where it says, Place, date and time,
9 whose handwriting is that?

10 **A** That would be my handwriting, sir.

11 **Q** And then as we go down, it says, Before we ask
12 you any questions, you must understand your rights.
13 So how exactly, would you demonstrate by reading and
14 explaining what happened, did you advise him of his
15 rights?

16 **A** I would have started with that first line,
17 Before we ask any questions, you must understand
18 your rights. Prior to telling him that, I asked
19 him -- I explained it to him and advised him that if
20 there was anything he did not understand, tell me
21 and we'll do our best to explain it to him.

22 I then proceeded by reading that first line,
23 Before we ask you any questions, you must understand
24 your rights. He had already been advised that I was
25 going to ask him to initial each line if he

1 understood it. I drew -- I even -- as I do with
2 everybody when I read them their rights, I advise
3 them that I'm going to draw a line there and ask
4 them to put their initials on that line.

5 I think he might have misunderstood me because
6 he just put his initials at the beginning of that
7 line, but I went on to read, You have the right to
8 remain silent. After I read that line to him, I
9 asked him, Do you understand that? If you
10 understand that, signify by putting your initials
11 there. And he put his initials.

12 **Q** So the writing -- there's a line and the line
13 is yours, but what appears to be initials of G.W.,
14 who wrote the G.W.?

15 **A** That would be Mr. Wardlaw that wrote that.

16 **Q** And he did that in acknowledgment saying that
17 he understood that right?

18 **A** Yes, sir.

19 **Q** And then after you read him about the right to
20 remain silent and he initialled that, what happened
21 next?

22 **A** I then proceeded to read him the next one --
23 line, Anything you say can be used against you in
24 court. He initialled that also signifying that he
25 understood it.

1 I then read him, You have the right to talk to
2 a lawyer for advice before we ask you any questions
3 and to have him with you during questioning. He
4 initialled that line as well.

5 The next line I read him was, If you cannot
6 afford a lawyer, one will be appointed to you before
7 any questioning if you wish. He initialled that
8 indicating to me that he understood it.

9 I read him, If you decide to answer questions
10 now without a lawyer present, you will still have
11 the right to stop answering questions at any time.
12 You also have the right to stop answering at any
13 time until you talk to a lawyer. And he initialled
14 that as well indicating that he understood.

15 **Q** Then after that, it says, Waiver of rights.
16 What is the last section there?

17 **A** Prior to the reading of his rights during the
18 conversation we had, we asked him about his
19 education. That's to indicate to us if he had the
20 capacity to understand this document. He said that
21 he dropped out in ninth grade and that he'd gone to
22 Olympia High School. I then asked him, after
23 reading the rights to him, to read aloud for me the
24 bottom paragraph, which is the waiver of his rights.
25 He read it. He read it clear, concise to me. It

1 was clear to me that he understood. He then
2 initialled what he read.

3 **Q** What does that last section read?

4 **A** That last section says, I have read this
5 statement of my rights and I understand what my
6 rights are. I'm willing to make a statement and
7 answer questions. I do not want a lawyer at this
8 time. I understand and know what I am doing. No
9 promises or threats have been made to me and no
10 pressure or coercion of any kind has been used
11 against me.

12 **Q** And he read that out loud himself?

13 **A** Yes, sir, he did.

14 **Q** And it's your belief that he understood what he
15 was reading?

16 **A** It's my absolute belief that he did.

17 **Q** And then he initialled it and then he signed.
18 That's his full name below it as well?

19 **A** That's right. That's his signature.

20 **Q** In the bottom left of State's ID Number 1,
21 there's a witness list, the top one, whose
22 handwriting and signature is that?

23 **A** The top one would be mine.

24 **Q** It says, Kevin Reese?

25 **A** Yes, sir.

1 **Q** The second witness looks more like initials.

2 Whose initials are those?

3 **A** That would be Investigator Hilton.

4 **Q** And he was present with you during the advice
5 of rights and during the interview of Mr. Wardlaw as
6 well?

7 **A** Yes, sir.

8 **Q** The bottom time has a -- or the bottom note on
9 the bottom left corner has a time on it. Again,
10 that's 11:17 a.m.?

11 **A** Yes, sir.

12 **Q** And that's when the advice of rights were
13 given?

14 **A** Yes, sir.

15 **Q** Did he appear to understand his rights as you
16 read them to him?

17 **A** He did.

18 **Q** And as he read them himself, true?

19 **A** That's correct.

20 **Q** Did he -- any question that he knowingly and
21 intelligently waived his rights to speak with you?

22 **A** There was no doubt about it, he knew -- he
23 understood.

24 **Q** Now, the end of the advice of rights and your
25 actual interview with Mr. Wardlaw, you audio taped;

1 is that correct?

2 **A** That's right.

3 **Q** And, ultimately, Mr. Wardlaw invoked his right
4 to remain silent, didn't want to talk anymore; isn't
5 that correct?

6 **A** That's right.

7 **Q** And that's where the interview ended?

8 **A** Yes, sir.

9 **Q** Let me show you a couple of disks here. Do you
10 recognize the first disk that I'm showing you?

11 **A** That is a disk of the interview with
12 Mr. Wardlaw.

13 **Q** That's the --

14 **A** A recorded interview.

15 **Q** Now, there's handwriting on there. Is that
16 your handwriting?

17 **A** That's right, that's my handwriting.

18 **Q** And this is the original full interview; is
19 that correct?

20 **A** That's right.

21 **MR. GRAHAM:** Your Honor, the State would mark
22 this as court's exhibit at this time.

23 **THE COURT:** Any objection?

24 **MS. FULLWOOD:** No, sir.

25 **THE COURT:** All right.

1 (Court's Exhibit Number 1, CD, marked for
2 identification.)

3 BY MR. GRAHAM:

4 **Q** Let me show you another audio or another CD and
5 ask you if you recognize this one. And that one is
6 labeled State versus Gonzales, interview with
7 Wardlaw, 1/19/12, and it says, Court, on it. Do you
8 recognize that?

9 **A** I recognize this as the court's version of it.

10 **Q** You actually listened to that earlier today,
11 didn't you?

12 **A** I did.

13 **Q** And there's -- on the left side of that disk on
14 the front, there's two sets of initials. There's
15 one set that belongs to who?

16 **A** Top set belong to myself after listening to the
17 disk this morning.

18 **Q** And then the bottom one, whose initials are
19 those?

20 **A** That would be Investigator Hilton's.

21 **Q** And is this a fair and accurate copy of your
22 interview with Mr. Wardlaw?

23 **A** That's right, it is.

24 **Q** Now, there were some things that were redacted
25 out of there; isn't that correct?

1 **A** That's my understanding, yes.

2 **Q** There were references -- he actually was
3 arrested that day on a probation warrant; is that
4 correct?

5 **A** Yes, sir.

6 **Q** In that interview itself, there were two
7 references on the original court's exhibit that --
8 where it stated, Roughly 30 minutes ago, they
9 arrested you on a probation warrant. Mr. Wardlaw
10 responded, Oh, that is what it was. And then it's
11 your voice, There was a warrant out for you on a
12 probation violation. Those have been redacted off
13 of this; isn't that correct?

14 **A** That's right.

15 **MR. GRAHAM:** Your Honor, this is what the State
16 will be using in court purposes. It's the only
17 thing that we found that we thought needed to be
18 redacted. I don't know whether Ms. Fullwood has
19 anything else. But, at this time, we'll mark this
20 as State's Number 2 for identification.

21 **THE COURT:** All right, sir.

22 Any objection, Ms. Fullwood, to the redacted
23 copy?

24 **MS. FULLWOOD:** I'm not sure. I don't know that
25 I've ever seen -- had a chance to listen to the

1 redacted copy. Certainly, I would want any
2 references to his arrest on a different type of
3 warrant, probation warrant, redacted. But I'd also
4 want redacted his invocation of his right to remain
5 silent because I don't think that they can try to
6 get the jury to derive any type of emphasis against
7 him based on his exercise of a constitutional right.

8 **THE COURT:** Mr. Graham.

9 **MR. GRAHAM:** Your Honor, I think it is what it
10 is. And we can listen to it if Your Honor wants to
11 listen to it to see what it is. They're questioning
12 him. They start to confront him with some
13 information. He says he's done talking. And the
14 officer says, Okay, I take that as we're done
15 talking, and they end the interview.

16 **THE COURT:** I'll listen to it. And then, of
17 course -- I'll listen to it during the break. And,
18 Ms. Fullwood, you also will have that opportunity if
19 there's anything else you need to raise.

20 **MS. FULLWOOD:** Yes, sir. Thank you.

21 **THE COURT:** So, at this time, I'm going to
22 allow it with that limitation that there may be
23 other things that need to come out.

24 **MR. GRAHAM:** Your Honor, I believe that's all
25 the questions from the State for Sergeant Reese on

1 this matter.

2 **THE COURT:** All right. Ms. Fullwood.

3 **MS. FULLWOOD:** Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. FULLWOOD:

6 **Q** Sergeant Reese, I'll try to keep this quick if
7 I can, okay?

8 **A** Thank you.

9 **Q** Were you there when Mr. Wardlaw was arrested?

10 **A** Not at that very moment, I wasn't. Eventually,
11 I ended up there.

12 **Q** Do you know the mode of his arrest? I mean,
13 did you have a SWAT team breaking down the door,
14 just knocking on the door or just grabbing him when
15 he walked outside or how was he arrested?

16 **A** I believe they caught him walking across a
17 couple of parking lots and arrested him at that
18 point.

19 **Q** So there was no drama?

20 **A** I wouldn't think so, no.

21 **Q** And you -- the police went in with probation
22 violation warrants to make that arrest?

23 **A** Went in?

24 **Q** Well, that was the basis for them arresting
25 him, the probation violation warrants?

1 **A** Yes, ma'am.

2 **Q** Were there already warrants for murder and
3 associated offenses issued for Mr. Wardlaw?

4 **A** No, ma'am.

5 **Q** Was the probation violation warrant issued by
6 the Richland County Probation Office as a result of
7 your agency working with them?

8 **A** I would say so, yes.

9 **Q** Okay. When you got down, I'll just call it,
10 the police station, is it that place on Lincoln
11 Street?

12 **A** Yes.

13 **Q** In Columbia, okay. When you took Mr. Wardlaw
14 to talk to him, to interrogate him, did you tell him
15 what you were planning on interrogating him about?

16 **A** Not at that point. I don't think at the point
17 that you're talking about, no.

18 **Q** So at the point you read him his rights, he
19 didn't know why you wanted to talk to him?

20 **A** I think at that point, he knew, but there were
21 two separate times when I had the opportunity to
22 speak with him. One is when I went out to the scene
23 where they had him in custody, and then, of course,
24 at the police department.

25 **Q** Did you question him out at the scene of his

1 arrest?

2 **A** I didn't ask him any questions that had
3 anything to do with the homicide. I rode down with
4 him and I think the only question I would have asked
5 him is, Don't I know you, we know each other, or
6 something like that.

7 **Q** Okay. So to your knowledge, the State's not
8 trying to put in any statements he might have made
9 during the ride into evidence in this trial, right?

10 **A** I don't know.

11 **Q** Okay. As far as you know, no?

12 **A** I don't know.

13 **Q** Okay. But we're just -- you're just here to
14 talk about your questioning down at the police
15 department?

16 **A** I would think so, yes, ma'am.

17 **Q** All right. Do you remember telling Mr. Wardlaw
18 during that questioning that he can help you by
19 helping himself?

20 **A** I don't recall saying that.

21 **Q** Had you ever said something similar to people
22 you were interrogating?

23 **A** I don't recall that. I don't think so, no,
24 ma'am.

25 **Q** Okay.

1 **MS. FULLWOOD:** Beg the Court's indulgence.

2 (Pause.)

3 **MS. FULLWOOD:** That's all, Your Honor. Thank
4 you. No further questions.

5 **THE COURT:** All right. Anything further?

6 **MR. GRAHAM:** Briefly to clarify something.

7 REDIRECT EXAMINATION

8 BY MR. GRAHAM:

9 **Q** Sergeant, when Mr. Wardlaw was arrested, you
10 got in your car and you went out to the place where
11 he was arrested at; is that correct?

12 **A** That's right.

13 **Q** And then you actually transported him back
14 yourself from that location to headquarters?

15 **A** I rode back with him. Another driver was
16 transporting. I was in the back seat with him.

17 **Q** And just to be clear, during that ride, from
18 the time you saw him when he'd been arrested in the
19 transport back to headquarters, prior to you reading
20 him his rights, you didn't try to interview him?

21 **A** I was extremely careful not to do such a thing
22 like that, so, no.

23 **Q** So you get him back to headquarters, we go over
24 the rights as we previously discussed, he says that
25 he'll talk to you and then you interview him; is

1 that correct?

2 **A** Yes, sir.

3 **MR. GRAHAM:** No other questions, Your Honor.

4 **THE COURT:** Anything further?

5 **MS. FULLWOOD:** No, Your Honor.

6 **THE COURT:** Thank you, sir. You may step down.

7 **MR. GRAHAM:** The State calls Investigator

8 William Hilton.

9 WILLIAM HILTON,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Once you're seated, state your full
12 name, spelling your last on the record.

13 **THE WITNESS:** First name is William Hilton,
14 H-i-l-t-o-n.

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 **Q** You're currently employed as an investigator;
18 is that correct?

19 **A** That's correct.

20 **Q** And how long have you worked for the Columbia
21 Police Department, Investigator Hilton?

22 **A** I started in 1993 and left in 2006, came back
23 in 2007, been there ever since.

24 **Q** Back in January of 2012, did you assist, at
25 that time, Investigator Kevin Reese on the case that

1 we're here for now against Mr. Wardlaw?

2 **A** Yes, sir, I did.

3 **Q** And were you involved with his interview?

4 **A** Yes, I was.

5 **Q** Tell me did you go out to where Mr. Wardlaw was
6 arrested or did you -- were you at headquarters or
7 responded to headquarters?

8 **A** No. I met them at headquarters. I was not on
9 the scene.

10 **Q** Looking at State's Exhibit Number 1, do you
11 have that in front of you, for ID?

12 **A** I do.

13 **Q** What is that form?

14 **A** That's an advice of rights form.

15 **Q** And were you present when that was given?

16 **A** I was.

17 **Q** How was that used -- your initials are on
18 there, aren't they?

19 **A** That's correct.

20 **Q** On the bottom left, you're the second set of
21 initials that honestly you can't read and tell who
22 they are, right?

23 **A** That's correct.

24 **Q** Would you briefly describe how those -- how
25 Mr. Wardlaw was advised of his rights?

1 **A** Sergeant Reese, well, Investigator Reese at the
2 time, when he was in the interview room, he read
3 each line as you see on the screen and had
4 Mr. Wardlaw initial that he understood what his
5 rights were before he questioned him.

6 **Q** Any question in your mind that he understood
7 what was going on?

8 **A** No question at all.

9 **Q** Any question that he understood his rights?

10 **A** No question at all he understood them.

11 **Q** The bottom line says, Waiver of rights. And
12 were you present when Mr. Wardlaw actually read
13 those rights out loud himself?

14 **A** Yes, sir, I was present.

15 **Q** Did he have any problem reading them?

16 **A** No, sir.

17 **Q** There are initials to the left of that on the
18 bottom, it's a G.W. Did he initial it and
19 understanding -- saying I understand those rights?

20 **A** Yes, sir.

21 **Q** And then there's a signature underneath there;
22 is that correct?

23 **A** That's correct.

24 **Q** And that's the defendant's signature,
25 Mr. Wardlaw?

1 **A** Yes, sir.

2 **Q** Did he appear to you to be under the influence
3 of drugs or alcohol?

4 **A** No, sir, he didn't.

5 **Q** Did he appear to understand his rights and what
6 was going on and where he was?

7 **A** Yes, sir.

8 **Q** Did you or Detective Reese or anybody else with
9 the Columbia Police Department threaten him to get
10 him to talk to you?

11 **A** No, sir, we didn't.

12 **Q** Did you or Investigator Reese or anyone else
13 coerce him to get him to speak?

14 **A** No, sir.

15 **Q** Did you or Investigator Reese or anyone else
16 make any promises to him in return for him talking
17 and answering your questions?

18 **A** No, sir.

19 **Q** Did you or Investigator Reese or anyone else
20 give him any hope of reward if he did speak with
21 you?

22 **A** No, sir.

23 **Q** He appeared to understand his rights?

24 **A** Yes, sir, he appeared to understand them.

25 **Q** And did he, in fact, speak with you?

1 **A** Yes, sir, he spoke with us.

2 **Q** And did he know -- and in your opinion, did he
3 knowingly and intelligently waive his rights and
4 speak to you of his own free will?

5 **A** Yes, sir.

6 **Q** There was --

7 (State's Exhibit Number 2, redacted CD,
8 marked for identification.)

9 **Q** Let's show you State's Number 2 for
10 identification. It's a disk, an audio disk. Do you
11 recognize that?

12 **A** Yes, sir.

13 **Q** On that disk itself, there are two sets of
14 initials, one of them Investigator Reese testified
15 was his and below him there's another set of
16 initials. Whose initials are those?

17 **A** Those are mine.

18 **Q** And did you, in fact, listen to this disk?

19 **A** I did.

20 **Q** And except for the part being taken out about
21 the probation warrant, other than that, does this
22 audio tape fairly and accurately depict the
23 interview that Investigator Reese and you conducted
24 with Mr. Wardlaw on January the 19th of 2012, at
25 approximately 11:17 a.m. at 1 Justice Square at the

1 Columbia Police Department?

2 **A** Yes, sir.

3 **MR. GRAHAM:** Thank you, Investigator Hilton.
4 Please answer any questions that Ms. Fullwood has.

5 **MS. FULLWOOD:** No questions.

6 **THE COURT:** All right. Thank you, sir. You
7 may step down.

8 **MR. GRAHAM:** Your Honor, those are the only
9 witnesses that the State has other than we can play
10 the tape or you can listen to it during the break or
11 however you want to do that. But other than that,
12 that's all that the State has at this time.

13 **THE COURT:** Ms. Fullwood, do you have anything?

14 **MS. FULLWOOD:** No, sir, we do not.

15 **THE COURT:** I'd like to listen to that tape and
16 give you that opportunity as well.

17 **MS. FULLWOOD:** Yes, sir.

18 **THE COURT:** And so I'm going to leave it open
19 regarding the tape until Ms. Fullwood has had a
20 chance and I've had a chance to look at it and
21 review that.

22 All right. Anything else from the State
23 pretrial?

24 **MR. GRAHAM:** Not from us, Your Honor.

25 **THE COURT:** Anything from the defense?

1 **MS. FULLWOOD:** Yes, sir, I have a couple of
2 motions in limine. Scattered -- I'm going to come
3 up here, if that's okay, so you can hear me better.

4 **THE COURT:** That's fine.

5 **MS. FULLWOOD:** Scattered throughout the
6 discovery are various references from witnesses as
7 to whether or not Mr. Wardlaw has any type of gang
8 affiliation. I believe that that kind of
9 information is irrelevant to any of the issues that
10 are present in this case. It doesn't fall within
11 any of the exceptions under Rule 404. It's simply
12 evidence of bad conduct. And I move in limine that
13 witnesses' references to that type of thing be
14 excluded.

15 **MR. HUBBARD:** We agree, Your Honor. We've
16 taken steps to try to do that.

17 **THE COURT:** All right, sir.
18 Anything further?

19 **MS. FULLWOOD:** One thing. It's my
20 understanding that the State is going to try to put
21 in evidence some rap lyrics that were seized as a
22 result of a search warrant. I want to move in
23 limine that any reference to that document as being
24 rap lyrics be withheld until the State has actually
25 authenticated the authorship of the document.

1 **MR. HUBBARD:** Your Honor, I've got some people
2 who can come in after lunch to authenticate it if
3 that's what it takes. If that's the objection, I
4 can put somebody up after lunch to say this is his
5 writing if that's -- is that the objection?

6 **THE COURT:** Well, I think her objection is not
7 necessarily to the document, it's to referring to it
8 as a rap.

9 **MS. FULLWOOD:** Until it's authenticated.

10 **MR. HUBBARD:** Authenticated by authorship, it's
11 his authorship?

12 **MS. FULLWOOD:** That's correct.

13 **MR. HUBBARD:** We can do that this afternoon.
14 We'll have one or more witnesses be able to say it's
15 his handwriting; therefore, it's -- and it speaks
16 for itself once that's done.

17 **MS. FULLWOOD:** I just thought it was something
18 we would be able to take up during the course of
19 trial since it's my understanding they have an
20 expert.

21 **MR. HUBBARD:** We do, but I mean if Your Honor
22 wants to go ahead and handle that.

23 **THE COURT:** Well, why don't we do this: You've
24 got a handwriting expert?

25 **MR. HUBBARD:** Yes, sir. And then we've got

1 some other folks who say, We've known him for a long
2 time; we know what his handwriting is.

3 **THE COURT:** Okay. But that -- you intend to go
4 through that testimony prior to admitting that
5 document?

6 **MR. HUBBARD:** We would, Your Honor. I mean,
7 obviously, if there's an objection and you want to
8 handle that now and then during the trial, it's just
9 subject to her objection, that's fine.

10 **THE COURT:** We can. I don't know. I think it
11 would be fine to let's just try the case, and she
12 may not have an objection after the foundation is
13 laid.

14 **MS. FULLWOOD:** That could be so.

15 **MR. HUBBARD:** I guess the only issue for us is
16 making reference to it in opening statement.
17 Obviously, I know there's always a risk talking
18 about evidence, but if it's something that's been
19 ruled on, then at least Your Honor's had a chance to
20 -- and everybody in the courtroom knows where Your
21 Honor falls on that issue.

22 **THE COURT:** I don't mind taking it up this
23 afternoon, we can do that. If you've got your folks
24 available, we'll do that.

25 **MR. HUBBARD:** Yes, sir.

1 **THE COURT:** All right. Well, we'll take that
2 up then after the break.

3 Ms. Fullwood, anything further?

4 **MS. FULLWOOD:** That's it, Your Honor.

5 **THE COURT:** Okay. We'll reconvene at 2:30.

6 (Whereupon, there was a luncheon recess.)

7 **THE COURT:** All right. Are we ready to proceed
8 with the testimony, I think, involving the document?

9 **MR. HUBBARD:** Yes, sir, the lyrics and the
10 authenticity of the lyrics.

11 **THE COURT:** All right. Solicitor.

12 **MR. HUBBARD:** Your Honor, the State calls
13 Lindsey Glover.

14 LINDSEY RAPHAEL GLOVER,
15 having been duly sworn, testified as follows:

16 **THE CLERK:** Once you're seated, state your full
17 name spelling your last on the record, please.

18 **THE WITNESS:** Lindsey Raphael Glover,
19 G-l-o-v-e-r.

20 DIRECT EXAMINATION

21 BY MR. HUBBARD:

22 **Q** Mr. Glover, I realize you don't want to be here
23 today. Just explain to the Court who is Sharon
24 Wardlaw in relation to you?

25 **A** That's my girlfriend.

1 **Q** What is her relationship to the defendant?

2 **A** His mom.

3 **Q** How long have you and Sharon Wardlaw been
4 together?

5 **A** Since 1994.

6 **Q** When y'all got together -- so that's almost
7 21 -- 19 years?

8 **A** Yeah.

9 **Q** Is that yes?

10 **A** Yeah.

11 **Q** During that time, Gonzales Wardlaw, was he your
12 stepson?

13 **A** Yeah.

14 **Q** Were you basically the only father he's ever
15 known?

16 **A** Kind of, sort of, you know, his dad.

17 **Q** But you've been the father figure in his life?

18 **A** Yeah.

19 **Q** During those years, you knew him when he went
20 to school and as he's growing up --

21 **MS. FULLWOOD:** Your Honor, objection. I'm
22 going to object to the leading. The Solicitor's
23 testifying not the witness. He's just saying yes or
24 no.

25 **MR. HUBBARD:** It's a hearing. I'm just

1 establishing does he --

2 **THE COURT:** He's trying to shortcut things.

3 **MS. FULLWOOD:** I understand, but it's getting
4 to the point where it --

5 **THE COURT:** Well, do you object that he's who
6 he says he is.

7 **MS. FULLWOOD:** I'm objecting to the leading.

8 **THE COURT:** Sustained.

9 **MR. HUBBARD:** I'll rephrase.

10 BY MR. HUBBARD:

11 **Q** Throughout the years, Gonzales -- what was the
12 nickname y'all had for him?

13 **A** Snoop.

14 **Q** Snoop?

15 **A** Yeah.

16 **Q** Throughout the years Snoop was in school, were
17 you in that house as well?

18 **A** Yes, I was.

19 **Q** I'm going to show you a document and see if you
20 can identify the handwriting of that document?

21 **A** I can.

22 **Q** Mr. Glover, whose handwriting is this document?

23 **A** It's Snoop.

24 **Q** It's Snoop's.

25 **MR. HUBBARD:** Your Honor, I offer this as a

1 court's exhibit at the time. These are the original
2 lyrics.

3 **THE COURT:** All right. We'll mark that --
4 well, I tell you what, let's mark it as a State's
5 Exhibit for identification purposes.

6 **MR. HUBBARD:** Well, I was wondering if you
7 wanted to keep it as a court record because we'll
8 put a redacted version in evidence during trial.

9 **THE COURT:** Oh, okay. Yes.

10 (Court's Exhibit Number 2, lyrics, marked
11 for identification.)

12 BY MR. HUBBARD:

13 **Q** Mr. Glover, this document references something
14 about Pelican Street or Pelican Road or whatever.
15 When Mr. Gonzales, when he lived with you, at some
16 point, did he move out to Pelican Street?

17 **A** Yes, he did.

18 **Q** Who was at that residence?

19 **A** That's his grandma house.

20 **Q** His grandmother.

21 **MR. HUBBARD:** Mr. Glover, that's all I've got
22 for you right now.

23 **THE COURT:** Anything?

24 **MS. FULLWOOD:** Yes, sir.

25 *****

1 CROSS-EXAMINATION

2 BY MS. FULLWOOD:

3 Q Mr. Glover, look, I'm not trying to be rude to
4 you or embarrass you, but isn't the fact true that
5 from 1992 to 2002, you were in the department of
6 corrections?

7 A Yes, I was.

8 Q So that means eight of the years -- the first
9 eight years you were Ms. Glover's boyfriend, you
10 were over at SCDC, right?

11 A Yes, I was.

12 Q So you have no knowledge of the goings on in
13 the household at that time, right?

14 A No, I don't.

15 Q Okay. Now, where all did Snoop go to school?

16 A He went to Pine Forest.

17 Q Was that middle, elementary?

18 A That is elementary school.

19 Q How about middle?

20 A He went to St. Andrews.

21 Q St. Andrews Middle? And was that the only
22 middle school he went to?

23 A He went to Olympia as well.

24 Q Okay. That was an -- wasn't that an
25 alternative school, a high --

1 **A** But it was in middle school you asked me.

2 **Q** That was an alternative middle school?

3 **A** Yes, ma'am.

4 **Q** Okay. Did he go to any other nonalternative
5 middle school?

6 **A** No, ma'am.

7 **Q** How many parent/teacher conferences did you go
8 to when Snoop was in school?

9 **A** None.

10 **Q** None, okay. How many times do you think you
11 helped him with his homework?

12 **A** Maybe once or twice. We did a black history
13 project on Malcolm X.

14 **Q** Okay. Like a diorama or a poster or what?

15 **A** He just had to get a book and write a few
16 paragraphs about him.

17 **Q** About how old was he then?

18 **A** I can't remember.

19 **Q** Would that be middle school age?

20 **A** Yes, ma'am.

21 **Q** Because he never went past middle school, did
22 he?

23 **A** No, ma'am.

24 **Q** All right. And he left your and Ms. Wardlaw's
25 house, what, when he was about 17 or 18; is that

1 right?

2 **A** Yes, ma'am.

3 **Q** Okay. So that's basically when he was a young
4 adult, right?

5 **A** Yes, ma'am.

6 **Q** And he was arrested when he was 19, right?

7 **A** Yes, ma'am.

8 **Q** Okay. So he had been out of your house for a
9 couple of years before he was arrested?

10 **A** Yeah. Well, off and on, yes, ma'am.

11 **Q** So sometimes he'd come back and stay a little
12 while and then sometimes he'd --

13 **A** That's his mama.

14 **Q** I understand. And then sometimes he'd go back
15 to grandmama's house or wherever?

16 **A** Yes, ma'am.

17 **Q** All right. So what kinds of things that he
18 wrote down did you have a chance to see when he was
19 a young adult?

20 **A** Part of his school work when, you know, his mom
21 would show me stuff.

22 **Q** Well, he didn't do too much school work, did
23 he?

24 **A** No, he didn't, but what little bit he did.

25 **Q** Well, it wasn't like he was writing 20-page

1 term papers his mama was showing you, was he?

2 **A** No, ma'am.

3 **Q** And isn't what she showed you more is what
4 teachers wrote about him not doing well in school
5 rather than what he wrote for school?

6 **A** I would say.

7 **Q** Okay. So you really haven't had that much of
8 an opportunity to see his handwriting, right?

9 **A** Yes, ma'am.

10 **Q** All right. And you've had almost no
11 opportunity to see his handwriting since he's been a
12 young adult because he's been out of your house most
13 of the time, right?

14 **A** Yes, ma'am.

15 **MS. FULLWOOD:** No further questions.

16 REDIRECT EXAMINATION

17 BY MR. HUBBARD:

18 **Q** You say he moved out when he was 17 or 18?

19 **A** Yes.

20 **Q** He was arrested on his 19th birthday, correct?

21 **A** Right.

22 **Q** And this document that you identified as his
23 handwriting --

24 **A** Uh-huh.

25 **Q** -- under oath, do you have any question it's

1 his?

2 **A** No.

3 **Q** You don't.

4 **MR. HUBBARD:** Mr. Glover, I appreciate it.

5 Thank you.

6 **THE COURT:** All right. Thank you very much,
7 sir. You may step down.

8 **MR. HUBBARD:** Your Honor, that's all we have
9 for Mr. Glover today.

10 **MR. GRAHAM:** The State calls Gail Heath.

11 **THE COURT:** Ms. Heath, if you'll please come
12 around and be sworn.

13 BRENDA GAIL HEATH,
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Once you're seated, state your full
16 name, spelling your last on the record, please.

17 **THE WITNESS:** Brenda Gail Heath, H-e-a-t-h.

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 **Q** Ms. Heath, where are you employed, ma'am?

21 **A** The South Carolina Law Enforcement Division,
22 commonly known as SLED.

23 **Q** And what do you do there?

24 **A** I'm a forensic document examiner.

25 **Q** And how long have you worked for SLED?

1 **A** Twenty-eight years.

2 **Q** And how long have you been a forensic document
3 examiner?

4 **A** Twenty-eight years.

5 **Q** What kind of training or education or
6 experience do you have that qualifies you as a
7 forensic document examiner?

8 **A** I have two undergraduate degrees from the
9 University of South Carolina. I am a graduate of
10 the South Carolina Law Enforcement Training Center
11 and the South Carolina Criminal Justice Academy.
12 Upon becoming employed at SLED, I took courses from
13 the United States Secret Service and the FBI, and I
14 completed a two-year internship in the SLED forensic
15 document lab, which is the common training for my
16 profession.

17 **Q** How many documents for SLED in your job as a
18 forensic document examiner have you looked at over
19 your 28 years?

20 **A** Hundreds of thousands.

21 **Q** And how many times have you testified in court
22 as an expert as to questioned documents as a
23 forensic document examiner?

24 **A** Approximately 178.

25 **Q** You've been qualified as an expert 178 times?

1 **A** That is correct.

2 **MR. GRAHAM:** Your Honor, at this time, the
3 State would offer Ms. Gail Heath as an expert in
4 forensic document examination.

5 **THE COURT:** Do you wish to voir dire the
6 witness or any objection to her qualifications?

7 **MS. FULLWOOD:** I'd like to examine her, please.

8 **THE COURT:** All right.

9 EXAMINATION

10 BY MS. FULLWOOD:

11 **Q** Ms. Heath, hello.

12 **A** Hi.

13 **Q** You mentioned you have two undergraduate
14 degrees?

15 **A** Yes, I do.

16 **Q** And they are in what fields?

17 **A** One is in secondary education. The other one
18 is in history.

19 **Q** Okay. So neither really related to what you do
20 now for a living?

21 **A** That is correct.

22 **Q** Okay. And the criminal justice academy, how
23 long a period of time is that school?

24 **A** Eight weeks.

25 **Q** Okay. And did that have anything at all to do

1 with questioned documents?

2 **A** No, it did not.

3 **Q** And in the SLED school, is that more of a
4 police techniques, law enforcement sort of basic
5 training for police officers?

6 **A** No. The SLED internship was actually in
7 forensic document examination. I went through a
8 training program and was tested.

9 **Q** I see, okay. Okay. So the internship itself
10 is a SLED school?

11 **A** Yes.

12 **Q** Okay. And how many courses have you taken in
13 conjunction with the Secret Service?

14 **A** I went to the basic two-week Secret Service
15 course and then I went to a typewriter seminar that
16 they offered.

17 **Q** And was that a basic course in document
18 examination?

19 **A** That is correct.

20 **Q** What about with the FBI?

21 **A** I took the two-week basic course and the
22 one-week typewriter seminar as well.

23 **Q** Okay. And in your field of inquiry, that would
24 be questioned documents, correct?

25 **A** That is correct.

1 **Q** Okay. In that field of inquiries, can you tell
2 us what scientific laws underlie that discipline?

3 **A** The basic principle is that no two people write
4 alike and no people write alike the same time.
5 Everybody has natural variation.

6 **Q** And when and by whom was that principle
7 established?

8 **A** It kind of goes back to probably the late
9 1800s, early 1900s. Albert S. Osborn was kind of
10 the father of questioned document -- formal
11 questioned document examination.

12 **Q** Okay. Well, he didn't establish that principle
13 by using what today we would consider a rigorous
14 empirical study, did he?

15 **A** That is correct.

16 **Q** It's kind of like back in sort of the same
17 time, they were saying the same things about things
18 like fingerprints and other items of evidence that
19 they were beginning to use in a forensic setting; is
20 that right?

21 **A** That's probably correct, yes.

22 **Q** All right. So to your knowledge, there's no
23 empirical scientific test or tests which confirm or
24 refute these two principles; is that correct?

25 **A** There have been studies by Dr. Kam out of the

1 Drexel University over the last probably 10 to 15
2 years trying to validate the reliability of
3 questioned document examination. I've participated
4 in some of those studies.

5 Q And exactly what was the methodology used in
6 that study?

7 A He used blind testing and all, got lay people
8 off the street, he got some students from his Drexel
9 University courses, and then he would go around the
10 country to different professional forensic document
11 examiner meetings and we would all take the same
12 tests. And then he would go back and correlate all
13 the information he received.

14 Q Did he publish the results of that test?

15 A Yes, he has.

16 Q Where?

17 A The American Academy of Forensic Sciences
18 Journals, and I believe there are probably some in
19 the American Society of Questioned Document Examiner
20 Journals as well.

21 Q Okay. And when you do your work, what
22 procedures do you use to perform that?

23 A To examine a case?

24 Q Yeah.

25 A Okay. The evidence comes into the laboratory

1 in a sealed envelope. I bring the evidence
2 upstairs. I place an item number and a laboratory
3 case number on it. I usually make a photocopy of
4 the evidence.

5 I examine the original documents underneath a
6 microscope looking for any similarities, any
7 differences. I make note of that. I look for
8 beginning and ending strokes. I look for connecting
9 strokes. I look for how the letters are formed. I
10 look for how the letters are placed on a baseline.
11 I look at all aspects of the handwriting or hand
12 printing microscopically.

13 Then I do a side-by-side comparison -- well,
14 then I look at the known samples that I receive of
15 someone's handwriting and I look at those
16 microscopically making note of the same things
17 whether there are similarities or differences in
18 what I see. And then I do a side-by-side comparison
19 where I actually compare the questioned letters to
20 the known letters.

21 **Q** And would it be fair to say that this is one of
22 those disciplines where it's sort of twofold,
23 there's the procedure itself of the raw material and
24 there's also the interpretation of the examiner?

25 **A** Yes. There's a subjective nature to it, yes.

1 **Q** Okay. And what quality control procedures do
2 you have in place to ensure the reliability of any
3 particular examination that is done?

4 **A** The other examiner in the office does a full
5 technical review, a hundred percent technical review
6 of all my case work.

7 **Q** All right. And how many officers -- questioned
8 document examiners do you have in your office?

9 **A** We only have two.

10 **Q** Two, okay. So you cross-check each other's
11 work?

12 **A** That is correct.

13 **MS. FULLWOOD:** Your Honor, that's all I have at
14 this time.

15 **THE COURT:** Thank you, ma'am.

16 Anything further from the State?

17 **MR. GRAHAM:** Not on that issue, Your Honor.

18 **THE COURT:** Thank you very much, ma'am. You
19 may step down.

20 **MR. GRAHAM:** Yes. That was just to her
21 qualifications as to an expert. I do have
22 questions --

23 **THE COURT:** You know what, I completely --

24 **MS. FULLWOOD:** And I would have a position on
25 that.

1 **THE COURT:** All right.

2 **MS. FULLWOOD:** And my position on that would be
3 that this particular technique is not of the nature,
4 of the type of technique that would be permissible
5 subject for expert opinion under Council or State v.
6 Jeffrey Jones II. It is not really underpinned by
7 any valid scientific theorems or laws or procedures.
8 It has a highly subjective element to it. The basic
9 theorem -- the two theorems that no two handwritings
10 are alike and no two are alike at the same time,
11 that's something that was established back in the
12 19th century basically on a person's gut feeling.

13 And, you know, Ms. Heath mentioned some
14 experimentation that had gone on, I think she said,
15 at Drexel University. And I refer the Court again
16 to State v. Jeffrey Jones II where in part, they
17 tried to validate the theories used in barefoot
18 insole impression on a Canadian study where if you
19 look at the opinion, and they layout sort of the
20 methodology there, it's very similar to the
21 methodology used at Drexel University. So I think
22 all in all, it does not meet the requirements of
23 State v. Council or State v. Jones II and I'd ask
24 that the Court exclude this testimony for that
25 reason.

1 **MR. GRAHAM:** Your Honor, I think that she said
2 that she'd been qualified as an expert 177 times or
3 178 prior to this. In State v. Jones, the second
4 one I believe, that the examiner that had came in, I
5 don't believe that he had ever been qualified as an
6 expert anywhere else other than here, Mr. Bodziak
7 who was hired by the defense. I'm also not sure
8 whether he had ever testified as an expert before.
9 That was a new science and the court found that it
10 didn't meet the criteria.

11 Questioned documents have been around for a
12 long time. There is a subjective part to it. It is
13 subject to peer review. It is subject to
14 repetition. There are numerous published articles
15 and peer review articles that have been done, I'm
16 sure, since the mid 1900s until today that continue
17 today. I believe it is good science. I believe
18 that it's admissible and I believe any question
19 would go to the weight the jury would give it and
20 not its admissibility.

21 **THE COURT:** I'm going to overrule your
22 objection. I'm going to allow the testimony. I
23 think it is -- it does go to the -- the issues that
24 were raised go to the weight of the evidence not to
25 its admissibility, and I'm going to allow it.

1 BY MR. GRAHAM:

2 Q Specifically, Ms. Heath, did you have an
3 opportunity to look at documents related to the
4 prosecution against Mr. Wardlaw Gonzales?

5 A Yes, I did.

6 Q Showing you what's been marked as Court's
7 Exhibit Number 2, do you recognize that?

8 A Yes, I do. It contains my case number, my item
9 number, my initials.

10 Q If that is the document that came to you, what
11 item would that have been for you?

12 A That was item number 26, the questioned
13 document.

14 Q I'm going to hand you multiple other folders
15 and ask if you recognize those envelopes and the
16 contents therein?

17 A The envelopes contain my initials and the date
18 on them and the case number. And the contents of
19 one of the envelopes are item number 28 and those
20 are known handwriting exemplars that I obtained from
21 Mr. Wardlaw.

22 Q Let me have that one and I will mark that as a
23 State's identification. This was contained --

24 A Item number 28.

25 Q Which is your item number 28, which were the

1 known handwriting exemplars that you took from the
2 defendant?

3 **A** That is correct. This next envelope contains
4 item number 25, which was a collected known standard
5 that I received from the Clerk of Court here in
6 Lexington.

7 (State's Exhibit Number 3, handwriting
8 exemplars, marked for identification.)

9 **Q** Ms. Heath, you were just talking about
10 documents that came from the Lexington County Clerk
11 of Court. What item number was that of yours?

12 **A** Item number 25.

13 **Q** And that's denoted by your lab number and your
14 item number at the bottom right corner?

15 **A** That is correct.

16 **MR. GRAHAM:** The State would mark that for
17 identification as well, Your Honor.

18 (State's Exhibit Number 4, known standard
19 document, marked for identification.)

20 **Q** What else do you have?

21 **A** This is item number 27. These are ESDA, that
22 is Electrostatic Detection Apparatus. And it's a
23 piece of equipment that I have in the laboratory
24 that brings up any kind of indented impressions that
25 are found on paper. And so I ran item number 26 on

1 the ESDA just looking to see if I could find any
2 indented information on that. And so item number 27
3 captures the information that I found in indented
4 form on item number 26.

5 **MR. GRAHAM:** Mark that for identification as
6 well, Your Honor.

7 (State's Exhibit Number 5, ESDA document,
8 marked for identification.)

9 **Q** I'm going to hand you one more envelope,
10 Ms. Heath, and ask you if you can identify the
11 contents of that envelope?

12 **A** These are three blank sheets of paper and the
13 other one is blank, but the word n-e-w, new, is
14 printed at the top. They're basically blank sheets
15 of paper with the exception of the last sheet of
16 paper.

17 **Q** Are there any item numbers of yours?

18 **A** They're item number 27. Excuse me, that would
19 be where the ESDA list came from. I apologize. The
20 ESDA list came off of the blank sheet of paper here
21 instead of item number 26.

22 **Q** So the -- those are item number 27 right there?

23 **A** Yeah. These are item number 27. The ESDA list
24 are 27.1, 2, 3 and 4 because they came from that
25 document.

1 **MR. GRAHAM:** Those are for ID as well, Your
2 Honor.

3 (State's Exhibit Number 6, three sheets of
4 paper, marked for identification.)

5 **Q** Ms. Heath, Court's Exhibit Number 2 you
6 previously recognized, that was the unknown document
7 that you looked at, correct?

8 **A** That is correct.

9 **Q** You have broken out -- that was item number 26,
10 but you've actually broken that down into two
11 subitems; is that correct?

12 **A** That is correct, because they're the front and
13 back sheet, so I called it 26.1 and 26.2.

14 **Q** And the front being 26.1 and the back being
15 26.2?

16 **A** That is correct.

17 **Q** In general, what is forensic document
18 examination?

19 **A** Forensic document examination attempts to
20 identify a writing, an author of a writing. It can
21 be used to identify a typewriting or a
22 machine-generated copy, such as a photocopy or a
23 facsimile copy. So there are several different
24 aspects. But the majority of what we do in forensic
25 document examination is to usually try to determine

1 whether something was written by somebody or not.
2 And we look at handwriting and hand printing to
3 determine authorship.

4 **Q** So, specifically, in this case, you have an
5 unknown document that came to you from law
6 enforcement, which is Court's Exhibit Number 2, I
7 believe. What, if anything, did you do to gain
8 other documents for you to compare known documents
9 to that unknown document?

10 **A** I received one document from the Clerk of
11 Court's office, which was purported to have been a
12 letter that Mr. Wardlaw had written to the Clerk of
13 Court's office, and then the other set of five
14 sheets of paper that I personally dictated
15 information to Mr. Wardlaw and he provided for me
16 there at the Lexington County jail.

17 **Q** And what item numbers of yours are those that
18 we're talking about there?

19 **A** Those are -- may I refer to my report?

20 **Q** Please do.

21 **A** Those would be item number 28, and they'd be
22 28.1, 28.2, 28.3 through 5.

23 **Q** Specifically then -- so you've met Mr. Wardlaw
24 before?

25 **A** That is correct, yes.

1 **Q** Describe how you go about collecting those
2 known samples.

3 **A** Usually we try to give the individual a sheet
4 of paper. If the questioned document is written on
5 unlined paper, then we use unlined paper. In this
6 particular case, it was on lined, kind of, notebook
7 paper. So I provided Mr. Wardlaw with lined
8 notebook paper, a pen, and then dictated the
9 information as it appeared on the questioned
10 document to him.

11 **Q** So there were five sheets of paper -- can you
12 -- and I don't know which one that was marked for
13 ID, Ms. Heath, so I apologize.

14 **A** It's got to be this one.

15 **Q** Specifically then you have five different
16 documents that you dictated orally to him and asked
17 him to write?

18 **A** That is correct.

19 **Q** What were those -- there are 28.1, 2, 3, 4 and
20 5. Specifically, stepping through them, tell me
21 what they are.

22 **A** Okay. 28.1, I asked Mr. Wardlaw if he would
23 write me just a little kind of synopsis of what he
24 liked to do or a little kind of autobiography just
25 to try to obtain natural normal handwriting from

1 him. So he wrote seven lines for me on that.

2 28.2 is the first page of the questioned note,
3 which would be 26.1. So I actually dictated the
4 contents of the lyrics.

5 **Q** Of the unknown document, you dictated part of
6 that and that's what 28.2 is?

7 **A** Yes, sir. And then 28.3 is the back side of
8 the questioned document. I dictated that
9 information to him as well.

10 And then 28.4, I asked Mr. Wardlaw just pick
11 out certain -- specific words out of the front and
12 back page of that and dictated those to him and
13 asked him to write that.

14 And then 28.5 is actually an inmate request
15 form from the Lexington County Detention Center that
16 he had written kind of in the normal course of
17 business.

18 **Q** What were your instructions to him when you
19 were telling him what to do?

20 **A** I asked him to handprint, and I recall asking
21 him to speed up his writing several times. He was
22 very slow and deliberate in his writing. I felt
23 like he was trying to disguise his writing, and so I
24 repeatedly asked him to speed up his writing.

25 **Q** Approximately how long did it take him to write

1 those, I guess, in your presence, those 28.1, 2, 3,
2 and 4, those four documents?

3 **A** A little over an hour.

4 **Q** After you were done obtaining his samples that
5 you observed him and you go back to your lab with
6 unknown samples, what do you do?

7 **A** I microscopically examine the questioned and
8 the known writings looking for any similarities or
9 differences, looking for pen stops, any type of
10 hesitations. I look at how the letters are formed.
11 I look at their placement on the line. I look at
12 the actual interior construction of the letters.
13 And after microscopic examination, then I do a
14 side-by-side comparison where I put both a
15 questioned and a known together and try to compare,
16 in this particular case, word for word since I had
17 dictated the information as it appeared on the
18 questioned document.

19 **Q** Now, there are how many different findings that
20 you can have in relating when you're comparing a
21 known to an unknown document?

22 **A** At the SLED laboratory, we have a nine point
23 scale that we use.

24 **Q** And can you go through either starting at the
25 top -- I guess, starting at the bottom and work our

1 way up?

2 **A** At the bottom. The bottom is an elimination
3 where we eliminate the writer as having written the
4 questioned document, that means that we found no
5 similarities and everything was dissimilar or
6 different about the writing. And so we eliminate
7 that person as the writer.

8 The next one up would be a strong probability
9 that the person did not write it, that would mean
10 that we would find a couple of features that were in
11 common, but all of the other features were
12 dissimilar. And so we would say that there was a
13 strong probability that the writer didn't write it.

14 Then we have a probable that the writer didn't
15 write it and that would be several features that
16 could be in common. They could be a class
17 characteristic, but there are also several -- there
18 are more features that are dissimilar. Indications
19 that the writer did not do it would be, there are
20 still some dissimilarities, but there are starting
21 to become more similarities with the writing. A
22 nonconclusion or a no conclusion is kind of at -- we
23 don't give percentages, but a no conclusion is kind
24 of like at 50/50. They're kind of an equal number
25 of similarities, as well as differences.

1 Then we go to the positive side of the scale
2 where we have indications that the writer wrote it,
3 that would mean that there are more similarities,
4 but then we do see a few dissimilarities. Probable
5 that the writer wrote it would mean we're starting
6 to see a lot more similarities and a few
7 dissimilarities. A strong probability that the
8 writer wrote it would be mostly all similarities
9 with one or two pen movements that we could not
10 account for. And then a total identification would
11 be where we fully identified the writer as having
12 written the questioned document.

13 **Q** Were you able to reach a result after your
14 comparison of your collected and known standard
15 versus the unknown document that was submitted to
16 you?

17 **A** Yes, I was.

18 **Q** To a reasonable degree of certainty as an
19 expert in the field of forensic document
20 examination, do you have an opinion as to whether
21 the unknown document was written by Mr. Wardlaw?

22 **A** Yes, I do.

23 **Q** And what is that opinion?

24 **A** My opinion is that Mr. Wardlaw probably wrote
25 the questioned entries on the questioned document.

1 **Q** And what is that based on?

2 **A** Based on the examination of his known standards
3 versus the actual writing on the questioned
4 document.

5 **MR. GRAHAM:** Thank you, Ms. Heath. Please
6 answer any questions that the defense has.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 **Q** I'm going to try to keep it short this time,
10 Ms. Heath.

11 **A** That's fine.

12 **Q** When you talked about the known standards, you
13 were talking about paperwork from the jail and from
14 the Clerk of Court's office, right?

15 **A** Well, known standards can be of two kinds:
16 They can be collected or they can be requested. I
17 had both for Mr. Wardlaw.

18 **Q** Okay. But, really, about the ones you got from
19 the courthouse and the ones you got from the jail,
20 is somebody at the jail or from the jail wrote
21 something to the Clerk of Court or to the jail staff
22 and Mr. Wardlaw's name was on it, right?

23 **A** That is correct.

24 **Q** All right. I'm a little confused about the
25 line you draw between strongly probable and

1 probable.

2 **A** Okay.

3 **Q** Can you tell us again where you draw the line?

4 **A** Usually a strong probability, there are one or
5 two features that can't be accounted for. In a
6 probable, there are more features that cannot be
7 accounted for within the set of known writing that I
8 examined.

9 **Q** And how many features would that be?

10 **A** We don't actually assign a number to them.

11 **MS. FULLWOOD:** No further questions.

12 **MR. GRAHAM:** Nothing else, Your Honor.

13 **THE COURT:** Thank you very much, ma'am. You
14 may step down.

15 **MR. HUBBARD:** Your Honor, there is one more
16 witness, but she is not here right now. I know she
17 has school. I don't know if we're going to get her
18 this afternoon, Your Honor. We're looking for her.
19 Her phone is off, but it's one of those
20 pay-by-minute phones.

21 **THE COURT:** What do you anticipate that
22 testimony to be?

23 **MR. HUBBARD:** Your Honor, it's another lay
24 witness, unless Your Honor feels like you have
25 enough to make a ruling now. I mean, obviously if

1 Your Honor's inclined to rule adversely to the
2 State, we would like to have that witness. If Your
3 Honor --

4 **THE COURT:** Let me hear from Ms. Fullwood
5 regarding -- and understanding, of course, that your
6 objection to that testimony altogether is in place.

7 **MS. FULLWOOD:** Right.

8 **THE COURT:** But other than that.

9 **MS. FULLWOOD:** Well, my position is that in
10 addition to this not being a subject for expert
11 testimony under Jones II and Council, this
12 particular testimony should not be allowed because
13 it really doesn't assist the trier of fact in
14 finding or resolving something at issue in the case
15 because of how the opinion is qualified. This isn't
16 conclusive. This isn't even strongly probable. It
17 is just probable is what her opinion is. That means
18 there are more than one or two features, but there's
19 no exact range of numbers assigned in the -- between
20 the standards and the sample that cannot be
21 accounted for.

22 And I think there are too many dissimilarities
23 to allow the jury to draw any conclusions from this
24 testimony and that therefore it should be excluded,
25 because it simply does not have the degree of

1 certainty that should allow it to go forward with
2 the stamp of science, the stamp of SLED and as
3 scientific evidence in this courtroom.

4 **MR. GRAHAM:** Your Honor, I think that we've
5 already argued that it's admissible. What it does
6 is we've got -- we've got one witness who says
7 that's his handwriting, I've known him for years,
8 that's his handwriting. What it does is it's
9 another scientific, and I understand that it's not
10 DNA with hard numbers, but it is testimony similar
11 to fingerprints. I mean, it's an opinion that this
12 fingerprint matches or it has similarities. I
13 believe those are allowed in. I believe this is the
14 same kind of thing. I believe that it's admissible.
15 I believe that it's a jury question of what they're
16 going to make with it.

17 Ms. Fullwood sounds like she wants there either
18 to be an elimination or a positive match and nothing
19 else should come in, and I don't think that's -- I
20 don't think that's what the law has allowed. I
21 mean, we can put Ms. Heath back up, if she hasn't
22 left yet, but I'm sure of her 178 times, not all of
23 them have been a master elimination.

24 **THE COURT:** That's not necessary. I'm going to
25 allow it. I agree, I think it goes to the weight.

1 I don't think you have to have expert testimony that
2 is definitive. I think it always goes to the
3 weight. The jury's going to judge the credibility
4 and the believability of witnesses.

5 Ms. Fullwood is one of the most outstanding
6 lawyers I've ever known and she'll do a great job,
7 I'm sure, in cross-examining and I think that's
8 appropriate, but I do think it goes -- I think it's
9 a weight issue and not an admissibility issue. I'm
10 going to allow it.

11 Yes, ma'am.

12 **MS. FULLWOOD:** That being the case, I would
13 like to make two motions in limine concerning that
14 testimony. First, the witness testified today that
15 his handwriting was slow and that, in her opinion,
16 he was trying to disguise his writing. I'd move to
17 exclude that, that is a completely subjective
18 opinion. It's not at all scientific. It's just her
19 feeling and that's not a proper subject of expert
20 testimony in this case. It's certainly far outside
21 of this witness' realm of expertise. So I'd ask to
22 exclude that.

23 Second of all, she talked -- you know, she was
24 talking about hierarchy of findings, that they had
25 the nine. And there was one finding sort of in the

1 middle that was no conclusion. And she said they
2 kind of describe that as a 50/50 probability. I'd
3 ask that those odds or percentages be excluded from
4 evidence because I'm concerned that the jury might
5 take that as a baseline and start assigning
6 probabilities up and down the scale.

7 And the way she explained the scale where, say,
8 the area we're in where there are dissimilar
9 features, but there's not even a range of numbers,
10 that the jury could reach some erroneous conclusions
11 if they started playing statisticians on their own.

12 **MR. GRAHAM:** Your Honor, I don't know whether
13 50/50 was her own opinion or whether that's
14 something that she revealed in describing that. I
15 can clear that up with her and if we need to take
16 that up -- if that's something that we want to get
17 in, we can take that up before she testifies and
18 deal with it at that time or I can put it up now,
19 whatever Your Honor wants.

20 **THE COURT:** Well, let's do it now because what
21 I'd like to know is that just the way she describes
22 that middle zone or is that, in fact, a baseline
23 that they use in their scientific analysis.

24 **MR. GRAHAM:** The State would recall Ms. Gail
25 Heath.

1 **THE COURT:** So, ma'am, if you would come around
2 and you're still under oath, please.

3 REDIRECT EXAMINATION

4 BY MR. GRAHAM:

5 **Q** Ms. Heath, when you were testifying earlier,
6 you went through the nine different types of
7 opinions that can be reached, the reporting
8 terminology out for questioned documents. When you
9 reached no conclusion, you actually talked about a
10 percentage. I think you said that's a 50/50. Can
11 you tell me what that means?

12 **A** Okay. Just in an attempt to kind of explain it
13 to a jury and all, no conclusion is in the middle
14 and the scale goes from the positive to the
15 negative. So if you've got no conclusion in the
16 middle, then up from no conclusion would be
17 indications the person wrote it, probable that the
18 person wrote it, strong probability that the person
19 wrote it and a full identification.

20 Back to the middle, every examination starts in
21 the middle, you're neutral, you have no conclusion.
22 So on the negative side of the scale, you would go
23 indications that they didn't write it, probable that
24 they didn't write it, strong probability that they
25 didn't write it, to elimination.

1 So no conclusion is in the middle of this
2 scale. In our minds where we examine evidence and
3 it comes in and we have no opinion and as we are
4 looking at it, examining it microscopically, as well
5 as side-by-side comparison, the features that we are
6 seeing either brings you up in one direction to the
7 positive or down in the other direction to the
8 negative. So I try to explain that to a jury as to,
9 it goes on in my mind with my rationale and then
10 what I'm observing in the features of the
11 handwriting.

12 **Q** When you said 50/50, what did you mean? Well,
13 explaining that -- if I ask you what you meant when
14 you said that, what is that?

15 **A** Just meaning that it's in the middle is why I
16 said 50/50, because you've got 50 percent of it on
17 this side and 50 percent of it on this side.

18 **Q** Which is basically no conclusion, I don't have
19 any opinion on this document?

20 **A** Right.

21 **Q** When you said 50/50, is that something that is
22 a standard used by other forensic document examiners
23 or is that just your own way in explaining it?

24 **A** I've heard other people use it to explain it
25 before, but I can just talk about the scale being in

1 the middle and going to each end, if you want me to.
2 I was just trying to explain how it worked.

3 **Q** When you said 50/50, were you offering an
4 opinion as to 50 percent was on the, yes, that it is
5 his and 50 percent on the, no, it wasn't?

6 **A** No. I'm just saying that there is no
7 conclusion whatsoever, that it's at zero. We don't
8 give percentages in document examination. We have
9 the nine opinions that we give and I was just trying
10 to explain that no conclusion is kind of like zero.

11 **Q** Is there a way that you think that you can
12 explain the same thing without using the terminology
13 50/50?

14 **THE COURT:** I think she did.

15 **MR. GRAHAM:** I think you just said it right
16 there.

17 BY MR. GRAHAM:

18 **Q** Are you -- is that the way you just explained
19 it was zero and going positive on one --

20 **A** Is that good?

21 **Q** That works for me if that's accurate for --

22 **A** That's fine, yes.

23 **Q** Ms. Fullwood also had a question about the
24 comments you made about, and I can't remember
25 whether you said the word deceptive or not; do you

1 remember what you testified to?

2 **A** I believe I said it was my opinion that he
3 attempted to disguise his handwriting by being slow
4 and deliberate. He actually drew it out instead of
5 writing.

6 **Q** What makes you say that?

7 **A** Based on looking at the collected writing that
8 I got from the Clerk of Court's office and the
9 inmate file as opposed to the writing that I took
10 from him that day.

11 **Q** So when you compared the known standards that
12 came from his inmate file at the sheriff's
13 department and the Clerk of Court's file here in
14 Lexington and you took those as known samples and
15 you compared those to the samples that you collected
16 from him, which were item number 28?

17 **A** That's correct.

18 **Q** You noticed a difference in the actual writing
19 styles?

20 **A** A difference in the actual, yes, construction
21 of it and kind of the speed and naturalness of the
22 handwriting. The handwriting on the standards that
23 I dictated to him were more kind of deliberately
24 kind of drawing out each stroke as opposed to
25 somebody writing with some speed and all, their

1 normally natural handwriting.

2 **Q** And you can tell by looking at his documents
3 with the Clerk of Court and with the sheriff's
4 department detention center that there was a
5 difference in the flow and the speed with which
6 those were written as compared to the ones you
7 dictated to him?

8 **A** That is correct.

9 **Q** And that's where your opinion comes from?

10 **A** Yes, sir, that is correct.

11 **MR. GRAHAM:** Thank you, Ms. Heath.

12 **THE COURT:** Cross.

13 RECROSS-EXAMINATION

14 BY MS. FULLWOOD:

15 **Q** I guess going to this thing about deliberate
16 disguising handwriting first, isn't it true that a
17 variety of factors would affect the flow of
18 handwriting?

19 **A** They could, yes.

20 **Q** Would that include the type of instrument used?
21 Say, I've got one of these gel pens versus an
22 old-timey ballpoint pen versus a pencil, wouldn't
23 the writing implement affect the speed?

24 **A** Not a whole lot in those three cases. They
25 should all fairly well flow on the paper.

1 **Q** All right. What about the type of paper used?

2 **A** I mean, it was just normal everyday paper. I
3 don't think the paper, you know, if it was like
4 construction paper or a paper that had a texture,
5 then that would create some differences in the
6 handwriting, but this was like smooth, flat surface
7 paper and the questioned document was written that
8 way, too.

9 **Q** What about the hardness or softness of the
10 surface on which you were writing?

11 **A** The softness of a surface would perhaps matter
12 and all. Somebody would maybe even go through the
13 paper on a soft surface if they're writing on like a
14 blanket or pillow or something.

15 **Q** So what sort of things do affect flow?

16 **A** Pardon me?

17 **Q** What sort of things do affect flow?

18 **A** Could be writing position, could be medication,
19 could be like if somebody was extremely ill, that
20 could affect it.

21 **Q** What about extremely nervous?

22 **A** Initially there could be, but after an hour's
23 time, you would think that that would be minimal.

24 **Q** Well, isn't it a fact that after a while,
25 Mr. Gonzales was complaining of hand cramps?

1 **A** Yes, he complained that his hand hurt. Yes,
2 yes, he did.

3 **Q** All right. And how exactly do you see flow and
4 speed in a person's handwriting?

5 **A** Well, I was observing him while he wrote.

6 **Q** Well, I understand that, but how could you see
7 the flow and speed in, say, these so-called known
8 samples?

9 **A** In looking at it microscopically and all,
10 somebody that is deliberately writing when they put
11 the pen down, there's kind of an ink blob, and you
12 can tell exactly where it starts where -- when
13 somebody who is doing their normal and natural
14 writing and the flow of the writing is going, you'll
15 have what we call little initial strokes or ticks on
16 a word or a letter, and so you can kind of judge the
17 naturalness of the writing from bluntness versus
18 little ticks that are initial strokes.

19 **Q** Okay. Going back again to this 50/50 thing, I
20 guess what you're trying to tell us, it's just sort
21 of colloquial words you use, that it's not really
22 any sort of scientific testing that's made the, you
23 know, shown the validity of saying it's a 50/50
24 chance, right?

25 **A** No. What I was trying to convey was that a no

1 conclusion is kind of right in the middle. It's a
2 neutral position. It's kind of like being at zero.
3 And then the other four opinions, there are four on
4 the positive side of the scale going all the way to
5 an identification and then there are four on the
6 negative side of the scale going all the way to an
7 elimination of that writer.

8 **Q** Don't some questioned document labs use
9 electronic technology like computers and scanners
10 and mediums like that to conduct handwriting
11 analysis? Isn't there a computer program that's now
12 used in some labs?

13 **A** The FBI is testing a program called Write On
14 that has the suspect write out the document and then
15 it compares -- it compares certain features. You
16 still have to have a human, though, to actually
17 examine, but they do have a program, yes.

18 **Q** Okay. But SLED isn't using that at this time?

19 **A** No, we do not, no.

20 **MS. FULLWOOD:** That's all Your, Honor.

21 **THE COURT:** Thank you very much, ma'am. You
22 may step down.

23 **MR. GRAHAM:** Nothing else, Your Honor.

24 **THE COURT:** All right. I'm going to deny the
25 motions in limine, but on this basis though: I'm

1 not going to allow the 50/50 language. I think
2 describing it the way she describes it without
3 adding -- and I appreciate her viewing it like a
4 50/50, but I think it's better to explain it the way
5 she explained it that there is a middle point and we
6 go on both sides.

7 And then as far as the observation of his
8 writing and her opinion regarding that, I'm going to
9 allow it with the explanation that she gave which
10 was tied into her findings as an expert versus
11 simply, in my opinion, I thought he was trying to
12 fake it, which was fine and that is her opinion, but
13 giving that opinion based on her expertise is an
14 appropriate context in which to put it, and so I'm
15 going to allow it with those caveats.

16 Anything else on these issues? And, of course,
17 noting your objection to that testimony in it's
18 total.

19 **MS. FULLWOOD:** I would just like to take a
20 quick look at the items the State had marked for ID.
21 I know I got copies in discovery, but I've never
22 seen the raw material.

23 **THE COURT:** Okay. And they are, at this point,
24 they're just marked for ID. They're not in
25 evidence.

1 **MS. FULLWOOD:** They're out of their envelopes.

2 **THE COURT:** You might want to make sure these
3 are put back in their appropriate envelopes because
4 they're not marked individually.

5 (Pause.)

6 **MR. GRAHAM:** I think that's all we have for
7 Your Honor. We can do this another --

8 **THE COURT:** Okay. Now, listen, on what we were
9 discussing back in chambers, I got an e-mail from
10 Court Administration and basically what Court
11 Administration is saying is that we are to follow
12 the county's policy regarding weather, so that if
13 the county is open, we're open. If the county shuts
14 down, we shut down. And so I'm going to -- what I'm
15 going to do is we're just going to -- it's going to
16 be business as usual unless we hear anything
17 different in the morning.

18 Well, then we'll be in recess until 9:30.

19 (The proceedings were concluded for February
20 10, 2014.)

21 (The following proceedings were held on
22 February 11, 2014.)

23 **THE COURT:** All right. Anything we need to
24 take up before we get started?

25 **MR. GRAHAM:** No, Your Honor.

1 **THE COURT:** Ms. Fullwood.

2 **MS. FULLWOOD:** That's fine.

3 **THE COURT:** Okay. Let me get y'all to step up
4 here real quick.

5 (Whereupon, a bench conference was held off
6 the record.)

7 **THE COURT:** What I thought I'd do is go back
8 and tell them that they can take notes before they
9 come out so that if they want these distributed, we
10 can do it. Any objection to that?

11 **MS. FULLWOOD:** No, sir.

12 **MR. HUBBARD:** No, sir.

13 **THE COURT:** I'm going to do that real quick so
14 we can get started.

15 (Pause.)

16 **THE COURT:** Let me make a comment real quick.
17 Folks, let me ask you, if you would, and I'll
18 explain this to the jury so that they'll understand,
19 I absolutely appreciate like when the jury comes in,
20 that you tend to stand because that's giving them
21 respect, but what I'd like to do is ask that no one
22 do that. And I'll tell you why:

23 I've been in trials before, you know, the jury
24 appreciates that, but sometimes lawyers get busy at
25 counsel table and the jury's coming in and they're

1 talking and they don't stand and everyone else has
2 stood and then the jury feels like that person is
3 disrespecting them. So to avoid that, I'm just
4 going to get everyone to remain seated and then
5 we'll just let them come in. And I'll explain to
6 them that I've asked everyone to do that, okay. And
7 then that way y'all can do your work and not worry
8 about having to stand and do stuff like that, okay.

9 So let's bring them in.

10 (The jury enters the courtroom at 9:57 a.m.)

11 **THE COURT:** All right. Folks, let me say a few
12 things before we get started. First off, if, at any
13 time, you're here in the courtroom, if someone isn't
14 speaking loud enough or you can't hear, please don't
15 hesitate to get my attention and let me know and
16 we'll get them to speak louder or repeat what it was
17 they said.

18 Also, temperature-wise if it gets too cold or
19 too warm in here, if you'll let us know, we'll try
20 to accommodate folks with that. You've got some
21 people saying, Judge, it's too hot in here and then
22 some other people saying, Judge, it's freezing in
23 here. I can't help everybody, but we'll try to make
24 sure it's comfortable for you.

25 Also, as you come in and out of the courtroom,

1 feel free to sit wherever you naturally flow in and
2 out, which means you may not -- where you're sitting
3 right now may not be where you sit throughout the
4 trial. It just depends on how you flow in and out
5 of the courtroom. There's only three, I guess,
6 reserved seats in the jury box. We have two
7 alternates, and the two alternates will occupy the
8 two seats that they're in. And then, at some point,
9 I'm going to appoint a foreperson, and then that
10 person will occupy this first seat. Other than
11 that, everyone else just sit wherever you normally
12 flow in and out, okay.

13 And then, finally, these folks are -- these are
14 good people and when you come in, typically, what
15 they'll do is they'll stand and they do that out of
16 respect to you. I've asked them not to do that, and
17 I'll tell you why I've asked them not to do that:

18 I used to always allow that and sometimes in a
19 case, lawyers at counsel table they get busy.
20 There's a lot going on, not just from the witness
21 stand, but when we take breaks, and there's a lot
22 going on. And then when we start back after the
23 break, I've had cases where counsel were conferring
24 with each other or they were talking to someone and
25 the jury came in and most people stood, they didn't

1 stand and the jury kind of felt like they were
2 disrespecting them and they weren't. They just were
3 involved in something they were doing. So to avoid
4 that miscommunication, I've just asked everyone just
5 to remain seated when you come in, so, you know, so
6 that there's no misunderstanding.

7 Now, before we get started, I'm going to ask
8 you, if you would, to please give Madame Clerk your
9 attention. She's going to place you under your oath
10 for your role as jurors in this trial.

11 (The jury was duly sworn by the Clerk of
12 Court at 10:01 a.m.)

13 **THE COURT:** Ladies and gentlemen, we're about
14 to begin the trial of the case of the State of South
15 Carolina versus Gonzales Wardlaw. What I want to
16 share with you before we get started is that more
17 than likely -- I don't know how many of you have
18 ever served on a jury in an actual jury trial, most
19 folks don't have the opportunity that you're having
20 this week. Most people's experience with regards to
21 jury trials is what they've seen on television or
22 what they've read in books or seen in the movies.
23 And, of course, those trials are always full of high
24 drama, intense action and riveting circumstances,
25 because that's Hollywood.

1 Now, during the course of this trial, while any
2 number of those things may occur, what is important
3 for you to keep in mind is that this trial is not
4 for your entertainment. This trial is a fundamental
5 part of our democracy. It is a search for the truth
6 in making sure that justice is done between the
7 parties that are before the Court. Searching for
8 the truth and making sure that justice is done often
9 times is slow, very deliberate, sometimes it's
10 repetitive, in other words, very different from what
11 you may have seen in the movies, read in books or
12 seen on television.

13 This courtroom is a place of honor that is
14 dedicated to the protection and to the preservation
15 of citizen's rights through what many people have
16 called the greatest justice system ever created.
17 The lawyers that appear before you, ladies and
18 gentlemen, are advocates for the parties that they
19 represent, but first and foremost, they are officers
20 of the court sworn to uphold the integrity and the
21 truthfulness of our judicial system. You should
22 expect them to be competent, ethical in the
23 performance of their representation of their
24 client's interest.

25 Now, you've just taken an oath to try this case

1 and to reach a fair and a just verdict and so you
2 are also expected to be professional, reasonable and
3 ethical in the performance of your duties, which I
4 have absolutely no doubt you'll do. And I want to
5 thank you for your contribution to our system of
6 justice here in Lexington County this week.

7 Now, I'm going to share some things with you
8 that are meant to serve as an introduction to the
9 trial of this case. This is not a charge on the
10 law. I will give you the charge on the law at the
11 close of all the evidence and after the attorneys
12 have had an opportunity to address you with their
13 closing remarks. But what I'm going to do now is
14 just merely explain the procedures that we're going
15 to follow so that you can better understand what's
16 going on as the trial progresses.

17 Now, in this case, as you recall, Mr. Wardlaw
18 is charged by an indictment which was filed with
19 this court and he is charged with the crime of
20 murder. The elements of that crime I will explain
21 to you later when I charge you on the law.

22 What I told you earlier is -- remains true as
23 to regards to that indictment. It is simply the
24 charge which brings that case into this court. It
25 is not in any sense evidence of any of the

1 allegations which it contains.

2 The defendant has pled not guilty to that
3 indictment and the State therefore has the burden of
4 proving each of the elements of the indictment
5 beyond a reasonable doubt. It will be your duty,
6 ladies and gentlemen, to decide whether or not the
7 State has met that burden. Your purpose as jurors
8 is to define -- is to find and determine the facts
9 of this case.

10 Ladies and gentlemen, you are the sole judges
11 of the facts in this case. If, at any time, I make
12 any comment regarding the facts, you must disregard
13 those comments because only you, the jury, can
14 decide what the facts are in this case.

15 You determine the facts from the testimony that
16 you hear and from any other evidence that is
17 introduced during the course of the trial. It is up
18 to you to determine the inferences which you feel
19 may be properly drawn from that evidence. It is
20 especially important that you perform your duty of
21 determining the facts diligently and conscientiously
22 because ordinarily there's no way for us to correct
23 an erroneous determination of facts by a jury.

24 Now, on the other hand, but with equal
25 emphasis, the same law that makes you the judges of

1 the facts makes me the judge of the law. The law as
2 given by the Court is the only law that you may
3 consider. You must accept and follow it even though
4 you may disagree with it.

5 I'm not allowed to tell you what I think about
6 the facts in this case and you are not allowed to
7 disagree with me about what the law is or what you
8 think the law should be. Your job is to take the
9 law as I give it to you and apply it to the facts as
10 you find the facts to be through the testimony of
11 the witnesses and other evidence that may be
12 introduced.

13 Now, as I've told you yesterday, until I advise
14 you it is appropriate, you are not to have any
15 conversation with anyone about this case. You are
16 not to begin deliberations in this case until all of
17 the evidence has been presented, the attorneys have
18 addressed you with their closing remarks and then
19 I've given you the charge on the law. It is
20 important that you keep an open mind and that you do
21 not decide any issue in this case until all of that
22 evidence has been presented and the lawyers have had
23 an opportunity to address you with their remarks.

24 It is your solemn responsibility to determine
25 the guilt or innocence of the defendant and your

1 verdict must be based solely on the evidence as it
2 is presented to you during the course of this trial
3 and on the law as I instruct it to you.

4 Now, in just a moment, the Solicitor will have
5 an opportunity to address you with what we call an
6 opening statement. And in that statement, he will
7 basically explain to you what the issues are in this
8 case or at least what he believes the issues are in
9 this case. Once he's concluded his remarks, then
10 the defense will have an opportunity to also make an
11 opening statement, if they choose to do so. They're
12 not required to make any statements.

13 But, ladies and gentlemen, what's important for
14 you to understand is that whatever statements or
15 comments are made during opening statements, those
16 statements are not evidence, what the lawyers tell
17 you is not evidence. They are not under oath.
18 They're not testifying. It is merely their
19 contention as to what they believe the evidence in
20 this case will show.

21 The evidence in the case will be presented to
22 you by witnesses who are sworn under oath and take
23 the witness stand and testify and then any other
24 exhibits that may come in during the course of the
25 trial.

1 Now, during the trial, you may hear one of the
2 attorneys say something along these lines, Judge,
3 may we approach the bench, or, Your Honor, we have a
4 matter of law we need to take up with the Court.
5 During those times, I may find it necessary to ask
6 you to step back into your jury room. If I do that,
7 if I ask you to step back into the jury room, the
8 only reason I would do that is simply this:

9 There are times when I'm discussing a matter of
10 law with the attorneys that it requires me to make
11 some comment either about testimony or some exhibit
12 or something that has been presented during the
13 course of the evidence in connection with a ruling
14 that I have to make. As I told you earlier, I'm not
15 to have any influence over you with regards to the
16 facts in this case and so to protect you from any
17 comments that I need to make in connection with the
18 ruling, I may ask you to step back into the jury
19 room so that I can hear the matter of law, make that
20 call and then bring you back out and allow the case
21 to continue.

22 Now, in determining what the true facts are in
23 this case, it's going to be up to you to decide
24 whether or not the testimony of a witness is
25 believable. It's going to be my responsibility to

1 rule as a matter of law whether certain testimony is
2 admissible or not. But once testimony is allowed
3 into this record, whether or not you believe it is
4 solely up for you to decide.

5 In deciding whether to believe a witness, you
6 have the right to consider the interest of any
7 witness, the bias of any witness, the opportunity
8 for the witness to have seen the matters and the
9 things about which that witness testifies, the way a
10 witness acts on the witness stand. You have the
11 right, ladies and gentlemen, to consider anything
12 that is in this record in helping you to evaluate
13 the testimony of witnesses. That means that it is
14 your duty to pay close attention to the witnesses,
15 observe them, listen carefully to the witnesses, as
16 well as to the attorneys and to the Court.

17 Please try not to let your thoughts wander, but
18 give strict attention to all the testimony in this
19 case so that at the end of the trial, after all the
20 testimony and the evidence has been presented, the
21 lawyers have addressed you with their closing
22 remarks and I've given you the law, you will then be
23 in the position to go back into the jury room,
24 discuss the case and deliberate and reach a verdict.

25 Now, before I turn it over to the attorneys for

1 their opening remarks, let me first inquire, are
2 there any objections or exceptions from the State
3 with regards to the Court's opening remarks?

4 **MR. GRAHAM:** None from the State, Your Honor.

5 **THE COURT:** Anything from the defense?

6 **MS. FULLWOOD:** None, Your Honor.

7 **THE COURT:** All right. Now, ladies and
8 gentlemen, if you would, please listen carefully as
9 the attorneys address you with their opening
10 remarks.

11 Mr. Graham.

12 OPENING STATEMENT

13 **MR. GRAHAM:** There was a coldhearted murder at
14 the Olive Garden on December 29th, 2011, and that
15 man {indicating}, Gonzales Wardlaw, is the murderer.
16 Thomas Hoefer was a young man and he's dead because
17 of the actions of Mr. Wardlaw.

18 Thomas was there at the Olive Garden that night
19 with his fiancée for the purpose of celebrating
20 life. Shacquana, his fiancée's mother, it's her
21 birthday, and they were gathering at the Olive
22 Garden to celebrate her birthday. Family and
23 friends were coming. It was about nine o'clock on a
24 Thursday night and the Olive Garden was crowded,
25 people were waiting for tables and that's why Thomas

1 was there.

2 Gonzales Wardlaw was there not to celebrate
3 life, but to take a life. He came there to buy
4 marijuana and Thomas was going to sell it to him.
5 You're going to hear evidence that puts a phone that
6 his mom bought for him, for Mr. Wardlaw, the phone's
7 going to put him at the Olive Garden at the time of
8 the murder. You're going to hear evidence from the
9 victim's phone that's going to show phone calls
10 coming in and out between the two of them. And the
11 last phone calls that Thomas received were from the
12 phone belonging to Gonzales Wardlaw.

13 You're going to hear from eyewitnesses.
14 They're going to tell you what they saw and what
15 they heard, a single shot in the parking lot of the
16 Olive Garden and Thomas Hoefer is dead. You're
17 going to hear that the person who shot him, Gonzales
18 Wardlaw, didn't stay to help. He ran, and he left a
19 trail of death as he ran away, the trail of bullets.

20 Thomas came to celebrate life, and he brought
21 death. Gonzales Wardlaw came with a gun, a gun
22 loaded with bullets and you'll see the kind of
23 bullets he brought. They were hollow-point bullets.
24 And the purpose of a hollow-point bullet is to kill.
25 That's what he brought, that's what he used and

1 Thomas Hoefer is dead.

2 You'll hear the physical descriptions of the
3 witnesses and they'll tell you that they match
4 Mr. Wardlaw. They'll tell you that it was a
5 light-skin tall male and a dark-skin shorter male.
6 They'll talk about facial hair. And you'll hear the
7 physical descriptions of Mr. Hoefer and Mr. Wardlaw
8 and it matches Mr. Wardlaw.

9 You'll hear how he ran away, how the police
10 came on the scene, collected all the evidence they
11 could, how they looked through the phone and how
12 their investigation led them to Gonzales Wardlaw.
13 Three weeks later, he's arrested. He's arrested not
14 at his home where he'd been staying, but somewhere
15 else because he was hiding. When they arrest him,
16 and you will see them, there are lyrics or writings
17 that you will hear from Mr. Wardlaw and he brags
18 about being at the Olive Garden and about someone
19 dying.

20 You're going to hear from Mr. Wardlaw's
21 stepfather, a man who's been in his life for 17
22 years. And he's going to tell you on the night that
23 Thomas Hoefer was killed, that he got a call from
24 that man, Gonzales Wardlaw. He met him at a Waffle
25 House. He took him and a girl and got them a hotel

1 room. And he told him, I shot him over drugs.

2 Thomas Hoefer died from a single gunshot wound
3 to the chest, a shot meant to kill, going through
4 Thomas' lungs. Thomas bled out. His heart stopped
5 beating and he died. A senseless killing over a
6 little bit of marijuana.

7 Why did Thomas Hoefer have to die? He didn't
8 have to die. He died because Gonzales Wardlaw chose
9 for him to. He died because nobody takes from
10 Gonzales Wardlaw. He died because he shot him in
11 the chest with a hollow-point bullet and left him to
12 bleed to death and die by his choice. He turned a
13 time of joy into a time of sorrow.

14 A coldhearted murder occurred at the Olive
15 Garden, December 29th, 2011. And at the end of the
16 testimony, you will all agree that Gonzales Wardlaw
17 is a murderer. Thank you.

18 **THE COURT:** Thank you, Mr. Graham.

19 Ms. Fullwood.

20 **MS. FULLWOOD:** Ladies and gentlemen of the
21 jury, this week is probably, with the exception of
22 the day his child was born, but aside from that, is
23 the most important week in 22-year-old Gonzales
24 Wardlaw's life. There he sits. And in the
25 courtroom are his mom, his stepdad, his brother, his

1 sister and all of them are concerned about his fate.
2 That means you people have an awesome
3 responsibility.

4 You've taken your oath as jurors. And you 12
5 were chosen because both sides agree that you 12
6 people, with our two alternates, will be fair to all
7 of us in rendering your verdict in this case. What
8 we'd ask you to do right now is to look at this case
9 the way you would want it to be looked at if you
10 were on trial, if your child was on trial, if your
11 friend was on trial, and that means we want you to
12 look at the evidence in a critical manner.

13 Like Judge Russo just told you, you have the
14 responsibility as part of your oath as jurors to
15 determine the credibility of the witnesses who
16 testify in this courtroom. That means in addition
17 to just listening to what they have to say, you have
18 to evaluate the testimony sort of the same way you
19 do in everyday life when you decide somebody is
20 worthy of your belief. Are they trying to protect
21 themselves? Are they trying to protect somebody
22 else? Do they have something to hide? Do they have
23 something to gain, something to lose from it? Could
24 they see what they say they saw under the
25 circumstances they say they saw it? Are they just

1 eager to please the police?

2 You might hear some scientific testimony in
3 this case. And we'd ask you to remember that
4 there's science science that is empirical science
5 where you know that it's science because it's
6 capable of proof and replication, and what we call
7 junk science. So we'll ask you to evaluate, in some
8 of these circumstances, the validity of some of the
9 scientific proof you might hear. And it boils down
10 to this:

11 Like you've been told, the State is responsible
12 to proving to you beyond a reasonable doubt every
13 element of the crime of murder. And it's part of
14 your responsibility as jurors in this case to look
15 for every possible reasonable doubt that might exist
16 and to give Gonzales the benefit of that doubt. And
17 if, at the end of the case, you find that there is a
18 reasonable doubt as to his guilt, then he must
19 receive a verdict of not guilty.

20 We just ask that you examine the evidence, pick
21 it apart and we think that after you hear it all and
22 sit down to deliberate, you're going to find that
23 he's not guilty of murder. Thank you.

24 **THE COURT:** Thank you, ma'am.

25 **MR. HUBBARD:** State calls Zachary Graham.

1 ZACHARY GRAHAM,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** Once you're seated, Mr. Graham, I
4 need you to speak up loud and clear. State your
5 full name, spelling your last, please.

6 **THE WITNESS:** Zachary Graham, G-r-a-h-a-m.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 **Q** Mr. Graham, do you go by Zachary?

10 **A** Yes, sir.

11 **Q** Do you mind if I just call you Zachary? I
12 think that's what we've been -- in our discussions.

13 **A** Yes, sir.

14 **Q** Zachary, how old are you?

15 **A** Twenty-eight.

16 **Q** And are you working?

17 **A** Yes, sir.

18 **Q** Where do you work?

19 **A** Cafe Strudel.

20 **Q** How long have you been there?

21 **A** A year.

22 **Q** Before that, where were you working?

23 **A** V.C. Summer Nuclear Station.

24 **Q** And where is that?

25 **A** Jenkinsville, South Carolina.

1 **Q** How long were you there?

2 **A** Right about two years.

3 **Q** I'm going to ask you about December 29th, 2011.
4 What, if anything, was going on in your family on
5 that date?

6 **A** We were celebrating my mother's birthday.

7 **Q** Where did y'all choose to celebrate her
8 birthday?

9 **A** The Olive Garden.

10 **Q** When you say the Olive Garden, which Olive
11 Garden are we talking about?

12 **A** The one on Harbison Boulevard.

13 **Q** Do you know what county that's in?

14 **A** Lexington County.

15 **Q** Do you know about what time you got there?

16 **A** Right about seven o'clock.

17 **Q** And did y'all eat there and celebrate your
18 mother's birthday?

19 **A** Yes, sir.

20 **Q** Do you remember was it just you and your mom or
21 did you have other family members?

22 **A** Brothers and relatives.

23 **Q** Having eaten, did y'all pay your bill and leave
24 or what can you tell us happened?

25 **A** Yes, sir, we paid our bill and left.

1 **Q** And prior to leaving or as you paid your bill,
2 what, if anything, occurred?

3 **A** As we're walking out of Olive Garden, a young
4 lady ran into the Olive Garden shouting that
5 somebody had been shot outside.

6 **Q** And as a result of that, what did you do?

7 **A** Me and my brother went outside to help the guy
8 who had been shot.

9 **Q** This guy that had been shot, can you describe
10 him?

11 **A** He's about my height, maybe a little taller.
12 Basically my height, my build.

13 **Q** Okay. Where was he when you first saw him?

14 **A** He was in the parking lot. He was stumbling
15 around.

16 **Q** Was he -- all right. If you're leaving out the
17 front doors, was he like off to the side or was he
18 in front of the building or where would you say he
19 was?

20 **A** He was in front off to the left a little bit.

21 **Q** What did you do, if anything, to help him?

22 **A** Me and my brother went -- as he was trying to
23 get towards the sidewalk, he stumbled between two
24 cars and me and my brother went to assist him. And
25 when he tried to get back up, we kind of escorted

1 him to the sidewalk and had him lay down, and then
2 we propped his head up and put pressure on the
3 wound. And my mother called the 9-1-1 and they, you
4 know, coached us through what we needed to do.

5 **Q** Okay. When you say we, who was actually the
6 one applying pressure to the wound?

7 **A** That was me.

8 **Q** Do you recall where on the body that wound was?

9 **A** Chest, the left upper chest, sir.

10 **Q** And in applying pressure, did you use anything?

11 **A** A rag, like a dish towel-type deal.

12 **Q** Is that something you had with you or is that
13 something somebody brought out of the restaurant?

14 **A** No, that was something that somebody brought
15 out.

16 **Q** And while you're doing this, you mentioned
17 about 9-1-1, someone coaching you through it. So
18 are you still on the phone with 9-1-1 while you're
19 doing that?

20 **A** I was not on the phone. My mother had called
21 9-1-1 and was relaying the message to me and my
22 brother.

23 **Q** Okay. At any time did y'all look to see if
24 there are any other wounds?

25 **A** My brother was looking for an exit wound. So

1 he rolled the young man on his side to see -- or to
2 check for an exit wound.

3 Q And did y'all find another wound?

4 A No, sir.

5 Q And did y'all let the operator on 9-1-1 know
6 that?

7 A Yes, sir, I believe she did.

8 Q And did you continue to apply pressure?

9 A Yes, sir.

10 Q Now, you're doing this, at this point, are
11 there law enforcement officers or an ambulance
12 there?

13 A There was nobody there but me and my brother.

14 Q Once law enforcement got there, did they take
15 over or did you continue to do what you were doing?

16 A I continued until the paramedics arrived.

17 Q So when law enforcement's there, they let you
18 continue doing what you were doing?

19 A Correct.

20 Q When the ambulance got there, what, if
21 anything, did you do?

22 A I assisted the paramedics in anything they
23 needed with helping get the young man into the
24 ambulance.

25 Q This young man that's been shot, had you ever

1 met him before?

2 **A** No.

3 **Q** While you're assisting him or at any time when
4 you helped him over to the sidewalk, did he say
5 anything to you?

6 **A** No, sir.

7 **Q** What was he doing while you were trying to
8 assist him?

9 **A** He basically kept eye contact with me and was,
10 you know, trying to breathe, but he was having
11 difficulty breathing.

12 **Q** Were you talking to him?

13 **A** Yes, sir. I was telling him to stay with me
14 and, you know, just focus on me.

15 **Q** At any time while his eyes are locked on you,
16 did he remove his eye contact and you call him back
17 or did he just stay locked in on you?

18 **A** There were several times where his eyes were
19 rolling into the back of his head and I got his
20 attention and, you know, shook him or, you know,
21 just rattled him a little bit and had him focus back
22 on me.

23 **Q** Okay. So is your eyes and his eyes locked?

24 **A** Yes, sir.

25 **Q** When the EMS got there and they start taking

1 over, you say you were helping them. What did you
2 do?

3 **A** I assisted them in moving the young man from
4 the ground to, I'm not sure what it's called, but
5 the board that they put onto the stretcher.

6 **Q** Okay. And help him get into the ambulance?

7 **A** Yes, sir.

8 **Q** I'm going to show you some photographs.
9 Zachary, while that screen's coming down, let me go
10 through some photos here. This picture of a
11 restaurant, is this the Olive Garden we're talking
12 about?

13 **A** Yes, sir.

14 **Q** And the sidewalk that you were discussing, does
15 this photograph, the second photograph, depict that
16 sidewalk?

17 **A** Yes, sir.

18 **Q** And, at some point, did you notice a phone on
19 the ground as well?

20 **A** Yes, sir.

21 **Q** This last photograph, does that depict the
22 telephone?

23 **A** Yes, sir.

24 **MR. HUBBARD:** Your Honor, I'll move all these
25 photographs in evidence at this time.

1 **THE COURT:** Any objection?

2 **MS. FULLWOOD:** None, Your Honor.

3 **THE COURT:** All right. Those will be in as
4 State's 7 through 9.

5 (State's Exhibit Numbers 7 through 9,
6 photographs, marked and admitted into evidence.)

7 BY MR. HUBBARD:

8 **Q** Zachary, we're going to look at State's Number
9 7. This is the Olive Garden; is that correct?

10 **A** Yes, sir.

11 **Q** And this is the one on Harbison?

12 **A** Yes, sir.

13 **Q** Now, I'm going to stand off. If I stand in
14 front of the screen, I'll end up blocking the jury.
15 This area that I'm pointing to here, it's kind of
16 dark on this big screen, but is that the main
17 entrance?

18 **A** Yes, sir.

19 **Q** The second photograph, State's Exhibit Number 8
20 -- this occurred during the nighttime or dark; is
21 that correct?

22 **A** Yes, sir.

23 **Q** About what time were y'all leaving the Olive
24 Garden?

25 **A** Right about, I'd say, between -- probably about

1 nine o'clock.

2 **Q** So it was -- and it's in December?

3 **A** Yes, sir.

4 **Q** So it's pretty dark by that point?

5 **A** Yes, sir.

6 **Q** All right. This photograph, these items that
7 we see in State's 8, what are those?

8 **A** Those are the dish towels that I referred to
9 earlier.

10 **Q** This vehicle here, you can't really tell if --
11 this green truck, was that there when you were
12 working on this young man?

13 **A** Yes, sir.

14 **Q** This parking spot right next to the green
15 truck, was there a vehicle there at the time?

16 **A** Yes, sir.

17 **Q** When you first saw this young man and you say
18 he was stumbling, where was he in relation to this
19 green truck and this parking spot here?

20 **A** Where those white lines are for the parking
21 spot.

22 **Q** These white lines?

23 **A** Yes, sir.

24 **Q** And that's when you saw him collapse?

25 **A** Yes, sir.

1 **Q** Now, when you say y'all moved him over towards
2 the sidewalk, was he completely up on the sidewalk
3 or where was he?

4 **A** No, sir. We escorted him from the back
5 driver's side passenger seat, the back seat door, to
6 the curb where we propped his head up on the curb.

7 **Q** So his head was propped around in here on this
8 curb?

9 **A** Yes, sir.

10 **Q** Is that correct?

11 **A** Yes, sir.

12 **Q** In going back to State's 7, that would be the
13 green truck in this spot. Does that look right? If
14 you look again at State's 8 --

15 **A** Yes, sir.

16 **Q** -- you see the handicap spot and the yellow
17 post?

18 **A** Yes, sir.

19 **Q** So the vehicles are parked here?

20 **A** Yes, sir.

21 **Q** I'm just orienting you there.

22 Now, again, when you had -- and by the time you
23 got him to the sidewalk, was any law enforcement
24 there or any EMS personnel?

25 **A** No, sir.

1 **Q** And, again, it was who on the phone with 9-1-1?

2 **A** My mother.

3 **Q** During this entire time, you mentioned eye
4 contact. Did that happen before EMS got there and
5 before law enforcement got there?

6 **A** Yes, sir.

7 **Q** Once they got there, did that eye contact
8 continue?

9 **A** Yes, sir.

10 **Q** While this individual, this young man, was down
11 lying on the ground here, what, if anything, did you
12 notice?

13 **A** Blood in his mouth, trouble breathing. Other
14 than that, he just focused on me.

15 **Q** Did you see anything in his hands at the time
16 that he was down on the ground?

17 **A** No, sir.

18 **Q** When y'all were working with him and you were
19 applying pressure, did you see anything else on the
20 ground?

21 **A** I noticed something under the SUV, that's --
22 what I know now is the cell phone.

23 **Q** Is that depicted in State's Exhibit Number 9?

24 **A** Yes, sir.

25 **Q** This kind of a teal color and white phone?

1 **A** Yes, sir.

2 **Q** Going back to State's Number 8, that yellow
3 placard, is that where we see that phone?

4 **A** Yes, sir.

5 **Q** Now, you're down helping; is that correct?

6 **A** That's correct.

7 **Q** Is that what gave you that vantage point?

8 **A** That's correct.

9 **Q** And, of course, this wasn't -- the placard
10 wasn't there at the time; is that correct?

11 **A** That is correct.

12 **Q** Okay. And you had mentioned once EMS got
13 there, you continued to help. What, if anything,
14 were you doing for this individual at that time,
15 this young man?

16 **A** I was holding his hand as he was being put into
17 the ambulance keeping eye contact with him.

18 **Q** So the entire time, even while they're putting
19 him in the ambulance, you've got not only his hand,
20 but y'all were still looking at one another?

21 **A** That's correct.

22 **Q** Did he ever say anything to you?

23 **A** No, sir.

24 **MR. HUBBARD:** Thank you, Mr. Graham. Please
25 answer any questions the defense has.

1 **THE COURT:** Ms. Fullwood.

2 **MS. FULLWOOD:** Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. FULLWOOD:

5 **Q** Hi. Were you, your brother and your mother the
6 only people in front of the Olive Garden while all
7 of this was going on?

8 **A** No, ma'am.

9 **Q** Were there other people trying to assist this
10 fellow?

11 **A** There was one other one. I don't know her
12 name.

13 **Q** Okay. And what were the other people doing?

14 **A** Just standing around watching.

15 **Q** Do you know how many there were?

16 **A** 15, 20.

17 **MS. FULLWOOD:** Okay. Thank you very much.

18 **MR. HUBBARD:** No further questions. Zachary,
19 thank you.

20 And, Your Honor, I ask that he be released.

21 **THE COURT:** Any objection?

22 **MS. FULLWOOD:** No, Your Honor.

23 **THE COURT:** Thank you very much, sir. You're
24 free to go.

25 **MR. GRAHAM:** State calls Shaquana Outing.

1 SHAQQUANA OUTING,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Have a seat, please, ma'am. Once
4 you're seated, state your full name, spelling your
5 last on the record, please.

6 **THE WITNESS:** My first name is Shaquana. Last
7 name is Outing, O-u-t-i-n-g.

8 DIRECT EXAMINATION

9 BY MR. GRAHAM:

10 **Q** Shaquana, how old are you?

11 **A** Twenty-three.

12 **Q** Can you pull the microphone a little closer to
13 you?

14 **A** Twenty-three.

15 **Q** Twenty-three. Shaquana, who was Thomas Hoefer
16 to you?

17 **A** My fiancé. The love of my life.

18 **Q** How long had you known Thomas?

19 **A** Since the eighth grade.

20 **Q** And how many years was that until he was
21 killed?

22 **A** About eight.

23 **Q** When were y'all to be married?

24 **A** 2013.

25 **Q** December 29th, 2011, you and Thomas were at the

1 Olive Garden?

2 **A** Yes, sir.

3 **Q** Why were you there?

4 **A** Because we wanted to celebrate my mother's
5 birthday.

6 **Q** And who all was supposed to be at the Olive
7 Garden that night?

8 **A** My fiancé and I, my mom, my aunt, and that was
9 it.

10 **Q** How did you get to the Olive Garden?

11 **A** I drove.

12 **Q** What kind of car did you have?

13 **A** I have a silver Dodge Neon.

14 **Q** And who was in the car with you when you drove
15 to the Olive Garden?

16 **A** My fiancé and my eight-month-old daughter.

17 **Q** And what's your daughter's name?

18 **A** **T.** Hoefer.

19 **Q** Is that Thomas' daughter?

20 **A** Yes.

21 **Q** Did you notice anything out of the ordinary as
22 you all were driving over there?

23 **A** No. We was very happy when we was driving over
24 there.

25 **Q** Did he receive any phone calls or make any

1 phone calls during the drive?

2 **A** Not to the drive there. He made phone calls
3 when we got to Olive Garden.

4 **Q** Do you know who he was calling?

5 **A** No, sir.

6 **Q** The telephone number 404-4419, does that mean
7 anything to you?

8 **A** That's my fiancé's number.

9 **Q** That's Thomas' number?

10 **A** Uh-huh.

11 **Q** When you got to the Olive Garden, was
12 everybody, was your mom there, was your aunt there,
13 was everybody there when you all first came up?

14 **A** Yes.

15 **Q** Did you all go right in?

16 **A** No.

17 **Q** Why not?

18 **A** Because there were a wait for seats inside
19 Olive Garden.

20 **Q** Where were you and Thomas and everyone else
21 waiting?

22 **A** I was inside my car and Thomas was inside my
23 car and my daughter was in my car.

24 **Q** Were there any other telephone calls being made
25 by Thomas or received by Thomas while y'all were

1 sitting in the car?

2 **A** He received phone calls.

3 **Q** Do you know who they were from?

4 **A** No.

5 **Q** After receiving the phone calls while you and
6 Thomas and your baby were sitting in the car, what
7 happened next?

8 **A** We were sitting in the car and he asked -- he
9 had told me that he was going to meet someone at
10 Olive Garden. He just never told me the name, that
11 they were supposed to be pulling up within five
12 minutes.

13 **Q** Did you ever see anybody pull up?

14 **A** No.

15 **Q** At some point, did Thomas get out of the car?

16 **A** Yes.

17 **Q** Why did he get out of the car?

18 **A** He got out of the car to let my aunt sit in the
19 passenger seat.

20 **Q** So when he got out of the car, where did he go?

21 **A** He was on the right side of my car pacing back
22 and forth on the phone.

23 **Q** Shaquana, let me show you a photograph and ask
24 if you recognize that?

25 **A** Yes.

1 **Q** Does that fairly and accurately depict the
2 location at the Olive Garden that night?

3 **A** Yes.

4 **MS. FULLWOOD:** No objection, Your Honor.

5 **THE COURT:** All right. Without objection.

6 (State's Exhibit Number 10, photograph,
7 marked and admitted into evidence.)

8 BY MR. GRAHAM:

9 **Q** Shaquana, on the overhead, that's State's
10 Exhibit Number 10 and you recognize that photograph.
11 What is that photograph showing?

12 **A** The photograph is showing where the last time I
13 saw my husband laying on the ground.

14 **Q** Where was your car parked?

15 **A** In the empty space that's to the left.

16 **Q** That empty space right there?

17 **A** Yes, sir.

18 **Q** The entrance to the Olive Garden, that would be
19 over there {indicating}?

20 **A** Yes, sir.

21 **Q** When Thomas got out of the vehicle and your
22 aunt got in, what did Thomas do?

23 **A** He was walking back and forth on the side of my
24 car on the phone.

25 **Q** He's here {indicating} on the side of the car?

1 **A** Yes, sir.

2 **Q** And he was on the phone?

3 **A** Uh-huh.

4 **Q** At some point was Thomas walking in front of
5 the Olive Garden, in front of your car as well?

6 **A** Not till he came back.

7 **Q** When you saw him, when was the last time --
8 what direction was he heading the last time you saw
9 him?

10 **A** He was going to the right.

11 **Q** Over this way {indicating}?

12 **A** Yes.

13 **Q** Could you see what he was doing over there?

14 **A** No.

15 **Q** How long after he disappeared was he gone
16 before you knew something was wrong?

17 **A** He maybe was gone about two minutes until I
18 heard a gunshot.

19 **Q** When you heard a gunshot, what happened next?

20 **A** I reached for my door handle and I was fixing
21 to get out my car, but my fiancé was walking in
22 front of my car to me. And then I got out the car
23 and that's when he told me he was shot.

24 **Q** Did he say anything else then?

25 **A** No. He asked me to call the ambulance, but he

1 didn't say anything else after that.

2 **Q** After he told you that he was shot and asked
3 you to call the ambulance, what happened next?

4 **A** I panicked. I grabbed my phone. I called
5 9-1-1. And I immediately was screaming in the phone
6 asking them to come to Olive Garden on Harbison
7 Boulevard, and I dropped my phone. And my fiancé
8 was fixing to collapse and fall on the side of my
9 car, so I caught him and I just hugged him real
10 tight and was trying to keep him there with me.

11 **Q** Shaquana, let me show you something else and
12 ask if you recognize that?

13 **A** Yes.

14 (Pause.)

15 **MS. FULLWOOD:** May we approach, Your Honor?

16 **THE COURT:** Yes.

17 (Whereupon, a bench conference was held off
18 the record, in the presence of the jury, but out of
19 the hearing of the jury.)

20 **MR. GRAHAM:** Your Honor, the State would move
21 this into evidence at this time.

22 **THE COURT:** Any objection?

23 **MS. FULLWOOD:** Object on the grounds of
24 relevancy.

25 **THE COURT:** All right. Overruled. I'll allow

1 it in.

2 (State's Exhibit Number 11, copy of victim's
3 driver's license, marked and admitted into
4 evidence.)

5 BY MR. GRAHAM:

6 **Q** Shacquana, State's Number 11, that's Thomas'
7 driver's license, isn't it?

8 **A** Yes, sir.

9 **Q** That's a picture of Thomas?

10 **A** (Witness nodded head.)

11 **Q** How tall was Thomas?

12 **A** About five eight, five -- yeah, five eight,
13 five nine.

14 **Q** Let me show you his driver's license. And how
15 tall does his driver's license say he is?

16 **A** Five eleven.

17 **Q** Is Thomas light skinned or dark skinned?

18 **A** Light skinned.

19 **Q** The phone that we were talking about that
20 Thomas had, do you remember that phone?

21 **A** Yes, sir.

22 **Q** Can you describe it?

23 **A** Yes, sir.

24 **Q** What color was it?

25 **A** It's a teal blue and it's white around the side

1 and it flips open.

2 **Q** And that's the phone that he was using to make
3 those phone calls and receive those phone calls at
4 the Olive Garden?

5 **A** That's the phone that I purchased for him.

6 **Q** Let me show you a phone and ask if you
7 recognize that phone. Whose phone is that?

8 **A** It's my fiancé's phone.

9 **MR. GRAHAM:** Your Honor, the State would offer
10 the phone into evidence at this time.

11 **THE COURT:** Any objection?

12 **MS. FULLWOOD:** No, Your Honor.

13 **THE COURT:** Without objection.

14 (State's Exhibit Number 12, cell phone,
15 marked and admitted into evidence.)

16 BY MR. GRAHAM:

17 **Q** Shaquana, when you were holding Thomas and
18 calling 9-1-1, what happened next after that?

19 **A** I remember holding him and watching his eyes
20 rolling back in his head and praying and asking for
21 God to help me and help my husband. I remember
22 calling the ambulance again, 9-1-1, twice because
23 they didn't come as fast. I remember Zachary and
24 another guy being around me helping.

25 **Q** Did the ambulance and the police show up at

1 some point?

2 **A** Yeah, about five minutes later.

3 **Q** What happened after the ambulance showed up?

4 **A** They put him on the stretcher and they put him
5 inside the ambulance and I asked to go with him, but
6 they wouldn't allow me because I had my daughter.

7 So I followed behind the ambulance and --

8 **Q** Do you know where they were going?

9 **A** They told me that they were supposed to be
10 going to Richland Memorial Hospital, but when I was
11 behind them, they cut off the lights about right
12 when you get off the West Columbia exit. And they
13 were going to Lexington Medical Center with their
14 lights off.

15 **Q** And what did that mean when their lights were
16 off?

17 **A** Well, my family always told me it means the
18 person is dead, but I didn't want to believe it.

19 **Q** Did you follow the ambulance to the Lexington
20 Medical Center?

21 **A** Yes.

22 **Q** And what happened when you got there?

23 **A** I got out the car with my daughter and I
24 remember running to the ambulance on the right-hand
25 side where they parked the ambulance. And I seen my

1 fiancé with his head to the left and he had a little
2 bit of blood on the sheets. And I immediately
3 started hollering, screaming because I knew he was
4 dead.

5 **MR. GRAHAM:** Thank you, Shaquana. Please
6 answer any questions Ms. Fullwood has for you.

7 **MS. FULLWOOD:** Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. FULLWOOD:

10 **Q** Hi, Ms. Outing. You and Thomas had been
11 together how long?

12 **A** We was in a relationship for three years and
13 we'd known each other for eight.

14 **Q** All right. And you knew that he sold
15 marijuana, didn't you?

16 **A** No, ma'am.

17 **Q** You did not know that?

18 **A** (Witness shook head.)

19 **Q** Do you remember about four or five days after
20 he died going and talking to Officers Reese and
21 Hilton down at Columbia?

22 **A** Yes.

23 **Q** Okay. And you acknowledged to them that he had
24 been involved in some illegal things, correct?

25 **A** Correct, in the past when he was in high

1 school, yes, ma'am.

2 **Q** Well, didn't you tell them on that day that
3 some of those things were ongoing, but you hope --
4 had hoped that he was getting out of that because,
5 you know, now that you two had a child?

6 **A** No, ma'am. I acknowledged them that he was
7 changing, that he has changed because he had a child
8 and he did not do those things that he did
9 previously before.

10 **Q** So you had no idea that he dealt in marijuana?

11 **A** Not at that time, no, ma'am.

12 **Q** Why did you think then that he was going around
13 the corner of the Olive Garden just to talk to
14 someone for a couple of minutes?

15 **A** I actually thought that maybe that was a friend
16 or maybe he wanted to speak to someone away from me.

17 **Q** Did you ask him why he was going around there?

18 **A** No, I did not.

19 **MS. FULLWOOD:** Okay. No further questions.

20 **THE COURT:** Thank you, ma'am.

21 **MR. GRAHAM:** Nothing else, Your Honor.

22 **THE COURT:** Thank you, ma'am. You may step
23 down.

24 **MR. HUBBARD:** State calls Chase Frazier.

25 *****

1 PHILLIP CHASE FRAZIER,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** Once you're seated, state your full
4 name, spelling your last on the record, please.

5 **THE WITNESS:** My name is Phillip Chase Frazier.
6 It's F-r-a-z-i-e-r.

7 DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 **Q** What name do you usually go by?

10 **A** Chase.

11 **Q** Is it okay if I go by that today?

12 **A** That's fine.

13 **Q** All of our conversations, I've been calling you
14 Chase. So if I call you Mr. Frazier, I'm going to
15 end up calling you Chase anyway.

16 Chase, let me ask you, were you at that
17 restaurant, the Olive Garden, on the evening of
18 December 29th, 2011?

19 **A** Yes, sir.

20 **Q** Who was with you going to the restaurant that
21 night?

22 **A** My girlfriend at the time whose name was Sarah
23 Ezell.

24 **Q** And going to that restaurant, about what time
25 were you getting there?

1 **A** I would say it was about right at nine o'clock
2 p.m.

3 **Q** And the restaurant's the Olive Garden?

4 **A** Yes, sir.

5 **Q** As you were getting to the Olive Garden, what,
6 if anything, did you notice?

7 **A** As I was pulling into the parking lot, I
8 noticed a dark-skin fellow talking to a light-skin
9 fellow. And it was just odd to me how I noticed the
10 dark-skin fellow stared at me, the way -- the way
11 the eye contact was that he had given me was real
12 distinct. It was odd.

13 **Q** Let me ask you this: Were you in your car or
14 out of your car?

15 **A** I was in my car.

16 **Q** With your girlfriend?

17 **A** Yes, sir.

18 **Q** And y'all were just pulling up into the parking
19 lot or were y'all leaving?

20 **A** We were pulling up into the parking lot.

21 **Q** You mentioned a dark-skin fellow and a
22 light-skin fellow. Can you describe their heights?

23 **A** The dark-skin fellow was noticeably shorter
24 than the light-skin fellow was. I can't really give
25 a range, but --

1 **Q** That's okay, but there was a difference in
2 height?

3 **A** Definitely, yeah, at least six inches at least.

4 **Q** And a difference in complexion?

5 **A** Yes, sir.

6 **Q** Of the two individuals giving you this odd
7 stare or odd look, which one was it, the dark-skin
8 shorter fellow or the tall lighter-skin fellow?

9 **A** The dark-skin shorter fellow was giving me the
10 odd look.

11 **Q** I'm going to show you a photograph and see if
12 that depicts the Olive Garden and the parking lot
13 area?

14 **A** Yes, it does.

15 **Q** And if we use that, can you describe, using
16 this, how you were coming and where you saw these
17 individuals?

18 **A** I was pulling into --

19 **Q** Well, I tell you what, if you can -- I'm going
20 to put it into evidence and we'll talk about it.
21 But this will help you?

22 **A** Yes.

23 **MR. HUBBARD:** I'm going to offer this in
24 evidence at this time.

25 **MS. FULLWOOD:** No objection.

1 **THE COURT:** All right. Without objection,
2 that's State's 13.

3 (State's Exhibit Number 13, aerial
4 photograph, marked and admitted into evidence.)
5 BY MR. HUBBARD:

6 **Q** Chase, I'm going to put this up on the big
7 screen. It's kind of dark. This building here,
8 what is that building?

9 **A** That's the Olive Garden.

10 **Q** Is this the parking area?

11 **A** Yes, sir.

12 **Q** This road that we see up in the left-hand
13 corner of this photograph, what is that?

14 **A** It's Harbison Boulevard.

15 **Q** Which side of the restaurant were you coming in
16 from? Were you coming from the left side of the
17 photograph or the right side?

18 **A** I was coming in from the left side of the
19 photograph.

20 **Q** I'm going to hand you a laser pointer just so
21 you see -- the little button there.

22 **A** Got you.

23 **Q** Can you show us the path you were taking as you
24 and your girlfriend were driving into the Olive
25 Garden?

1 **A** I entered on this back left side of the parking
2 lot right here and we traveled down the parking lot
3 and then took a right heading that direction. I
4 noticed the two people were standing right there.
5 And as I was coming from this side up that way
6 {indicating}, as I was driving past the two people
7 that were standing here, I noticed the darker-skin
8 fellow, that was when he gave me that stare. As I
9 was coming through there, he looked at me pretty,
10 you know, as if -- as if he knew what he was about
11 to do kind of way, just kind of scoping out the
12 situation.

13 **Q** All right. Let me do this: Is this the area
14 you see them in?

15 **A** Yes, sir.

16 **Q** Now, as y'all were driving towards the Olive
17 Garden in the parking lot here and on this photo
18 going from left to right and you see these
19 individuals, you say you see a tall individual and a
20 shorter individual?

21 **A** That's correct.

22 **Q** Were they both sideways looking at you or was
23 one of them -- did one of them have their back to
24 you?

25 **A** The dark-skin fellow had his back to me as I

1 was driving in his direction, but as I got closer,
2 he turned his head towards the left to look at me.
3 So he would have, initially, had his back to me, but
4 as I got closer, he did turn his head to the left
5 and looked at me. The lighter-skin fellow was just
6 standing directly across from him, so he would have
7 already been facing my direction as I was
8 approaching.

9 **Q** The lighter-skin fellow -- let me show you
10 State's 11. Does that look familiar?

11 **A** It does, yes, sir.

12 **Q** Was this individual giving you any kind of odd
13 stare?

14 **A** No, he was not.

15 **Q** Now, the darker-skin shorter guy, when you say
16 a stare, was it just where he's looking around his
17 shoulder like this {indicating} and then turned back
18 to the taller guy?

19 **A** Yeah, it was, but it was -- it was pretty a
20 defined stare. I mean, it wasn't just like a quick
21 glance, you know. It was --

22 **Q** Well, let me ask you about that. In standing
23 there with his back to you, did he just give you a
24 quick look?

25 **A** It was a strong enough stare to where I made a

1 comment to my girlfriend that it was odd at how
2 strong he was staring at me.

3 **Q** What, if anything, did you say to your
4 girlfriend?

5 **A** I said, That was weird. Honestly, probably
6 something to this extent, What the hell is that dude
7 mugging me for, you know. He was blankly looking at
8 me in my eyes.

9 You know, if someone stares me down, generally
10 I wouldn't, you know, just shrug it off, wouldn't
11 really think about it, but it was enough of a stare
12 for me to question it and to make a comment about
13 it.

14 **Q** All right. If these individuals are here and
15 you're driving past them, did you go ahead and head
16 to this area to park?

17 **A** I did.

18 **Q** What, if anything, happened as you were driving
19 to park?

20 **A** I heard the gunshot go off probably ten feet
21 past where they were initially standing. So, you
22 know, literally probably right in front of the
23 actual entrance to the Olive Garden.

24 **Q** So, like, right over in here somewhere?

25 **A** That's it, yep. And I continued to park.

1 **Q** When you heard that gunshot, what did you do?

2 **A** I looked to my right, which was the direction
3 in which I heard it, and I continued to park my
4 vehicle. And where I parked my vehicle, I was able
5 to see the light-skin fellow on the sidewalk, which
6 I just kind of put everything together what had
7 happened.

8 **Q** When you saw him on the sidewalk, was he still
9 on this corner or was he moved up closer to the
10 entrance?

11 **A** He was moved up closer to the entrance. But as
12 soon as I heard the gun shot off, I correlated that
13 with the dark-skin fellow's stare, and I noticed
14 that they were both talking together and I noticed
15 that the dark-skin fellow was not there anymore.
16 So, you know, having correlated all of that in my
17 mind, I just kind of put it together that that was
18 what had happened considering I didn't see the
19 dark-skin fellow anymore.

20 **Q** The dark-skin fellow, do you remember what, if
21 anything, he was wearing? And I know it's been
22 about two years.

23 **A** I remember him wearing a hoody. I don't
24 remember exactly what color it was. He had blue
25 jeans on and a hoody, gray or blue hoody maybe.

1 **Q** Any facial hair or no facial hair or could you
2 tell?

3 **A** I couldn't really tell. I think that the
4 light-skin fellow had facial hair. I don't recall
5 if the dark-skin fellow had any, but I do recall
6 that the light-skin fellow did have facial hair.

7 **Q** Looking back at State's 11, when you back out
8 of -- when you got out of your car and were walking
9 towards the entrance, is that the individual you saw
10 lying on the ground?

11 **A** Yes, sir.

12 **MR. HUBBARD:** Chase, I believe that's all I
13 have for you. If you would, answer any questions
14 the defense has.

15 CROSS-EXAMINATION

16 BY MS. FULLWOOD:

17 **Q** Hey, Mr. Frazier.

18 **A** Hey. How are you?

19 **Q** Fine. Thank you. Mr. Frazier, didn't you
20 initially tell the police that the dark-skinned guy
21 was somewhere between five seven and six feet tall?

22 **A** I may have. I honestly don't remember what I
23 initially told the police, but whatever I initially
24 told the police was a definite height difference
25 between the two.

1 **Q** Do you remember that you gave them a written
2 statement?

3 **A** I do.

4 **Q** Okay. Do you think it would help you remember
5 what you told them if I show it to you?

6 **A** It would, yes, ma'am.

7 **Q** Okay. And what I'm interested in is this
8 sentence at the next to the last line at the bottom
9 of the page.

10 **MR. HUBBARD:** I have no objection if she wants
11 to introduce the whole statement.

12 **MS. FULLWOOD:** I don't intend to introduce it.
13 I'm just asking him about what he told the police.
14 BY MS. FULLWOOD:

15 **Q** Is that correct?

16 **A** That's correct. That's what I initially saw.

17 **MS. FULLWOOD:** Okay. Thank you, Mr. Frazier.
18 No further questions.

19 REDIRECT EXAMINATION

20 BY MR. HUBBARD:

21 **Q** Mr. Frazier, you have the one guy at about five
22 seven; is that correct?

23 **A** That's correct.

24 **MR. HUBBARD:** Okay. Thank you. No further
25 questions.

1 **THE COURT:** All right. Thank you very much,
2 sir. You may step down.

3 **THE WITNESS:** Appreciate it.

4 **MR. HUBBARD:** State calls Marie Wearing.

5 **THE COURT:** Hang on before you go to the next
6 witness.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 **THE COURT:** All right. You may call your next
11 witness.

12 **MR. HUBBARD:** State calls Marie Wearing.

13 MARIE WEARING,

14 having been duly sworn, testified as follows:

15 **THE CLERK:** Have a seat up there, please,
16 ma'am. Once you're seated, speak up loud and clear.
17 State your full name, spelling your last on the
18 record, please, ma'am.

19 **THE WITNESS:** Marie Wearing, W-e-a-r-i-n-g.

20 DIRECT EXAMINATION

21 BY MR. HUBBARD:

22 **Q** Ms. Wearing, where do you work?

23 **A** South Carolina Department of Motor Vehicles.

24 **Q** How long have you been working there?

25 **A** For 25 years.

1 **Q** And if I may, what do you do there?

2 **A** Custodian of driver's records.

3 **Q** So you're a custodian of the records?

4 **A** Yes.

5 **Q** So would that -- you say driving records?

6 **A** And identification card.

7 **Q** So in South Carolina, if you don't have a
8 driver's license, you can have an identification
9 card?

10 **A** Yes.

11 **Q** And you maintain those records?

12 **A** Yes.

13 **Q** I'm going to show you a couple of records and
14 see if you recognize these. One is on a Thomas
15 Hoefer. Is this a document that y'all keep in...

16 **A** Yes.

17 **Q** The other is on a Gonzales Wardlaw. Is that a
18 record that you keep in your custody?

19 **A** Yes.

20 **MR. HUBBARD:** Your Honor, I offer these into
21 evidence at this time.

22 **MS. FULLWOOD:** No objection.

23 **THE COURT:** Without objection.

24 (State's Exhibit Number 14, victim's driving
25 records, and State's Exhibit Number 15, defendant's

1 driving records, marked and admitted into evidence.)

2 BY MR. HUBBARD:

3 Q Ms. Wearing, I'm going to put these up on the
4 big screen. State's Exhibit 14, this is your record
5 on Thomas Hoefer?

6 A Yes.

7 Q I don't know if you can see that, but do you
8 see the height? That's not fair probably to ask you
9 that --

10 A Yes, I can see that.

11 Q If you're like me, my eyes used to work.

12 A Thanks.

13 Q There you go, glasses. Can you tell me the
14 height of Mr. Hoefer?

15 A Five eleven.

16 Q And what's his weight?

17 A 170 pounds.

18 Q Okay. Mr. Gonzales Wardlaw, what is his
19 height?

20 A Five five.

21 Q And his weight?

22 A 150 pounds.

23 Q So you have five eleven and five five?

24 A Yes.

25 Q And, again, State's 15, this is Gonzales

1 Wardlaw?

2 **A** Yes.

3 **Q** And the information as to his height and
4 weight, that's also maintained with your records for
5 all DLs and IDs?

6 **A** Yes, sir.

7 **MR. HUBBARD:** Thank you, Ms. Wearing. That's
8 all I have.

9 CROSS-EXAMINATION

10 BY MS. FULLWOOD:

11 **Q** Just briefly, Ms. Wearing. Hi.

12 **A** Hi.

13 **Q** When they issue those documents to people, the
14 department of motor vehicles doesn't have a scale
15 and a measuring stick to weigh people or measure
16 them, right?

17 **A** Right.

18 **Q** You just rely on what the people tell you?

19 **A** That's correct.

20 **MS. FULLWOOD:** Thank you, ma'am.

21 **MR. HUBBARD:** No further questions. I ask that
22 she be excused.

23 **THE COURT:** Ms. Fullwood, any objection?

24 **MS. FULLWOOD:** No, none whatsoever.

25 **THE COURT:** Thank you very much. You're free

1 to go.

2 Call your next witness.

3 **MR. GRAHAM:** The State calls George Wise.

4 GEORGE CALVIN WISE,

5 having been duly sworn, testified as follows:

6 **THE CLERK:** Have a seat, please, sir. Once
7 you're seated, state your full name, spelling your
8 last on the record, please.

9 **THE WITNESS:** Name is George Calvin Wise.
10 Wise, W-i-s-e.

11 DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 **Q** Where are you employed, Mr. Wise?

14 **A** City of Columbia Police Department.

15 **Q** And what do you do there?

16 **A** I'm a crime scene investigator.

17 **Q** How long have you worked for the City of
18 Columbia Police Department?

19 **A** Twenty years.

20 **Q** And in that course of your career, what have
21 you done?

22 **A** Started off as a patrol officer for about four
23 or five years, worked as a K-9 dog handler. Once my
24 dog got up in age and retired, I took a position in
25 the crime scene unit.

1 **Q** What is a crime scene investigator?

2 **A** A crime scene investigator is a person
3 basically that can -- crime scene investigator is
4 basically a person that goes into a crime scene and
5 we photograph it. If we're requested, we may video
6 tape it. We then process the scene for
7 fingerprints, DNA, trace evidence, talking about
8 hair and fiber. Then from there, once we photograph
9 and all, we collect the evidence and place it into
10 the evidence room.

11 **Q** On December 29th, 2011, were you working as a
12 crime scene investigator?

13 **A** Yes.

14 **Q** And did you respond to a call?

15 **A** Yes.

16 **Q** Do you remember approximately what time and
17 where you responded?

18 **A** If I recall, sir, the time was probably a
19 little after nine o'clock, probably about 9:15, 9:20
20 when I was notified.

21 **Q** And where did you respond to?

22 **A** I responded to Olive Garden on Harbison
23 Boulevard.

24 **Q** And is that in Lexington County?

25 **A** Yes, correct.

1 **Q** When you got on scene -- well, what did you do
2 when you arrived?

3 **A** Once I get on the scene, a lot of times I have
4 a lot of information coming to me. I have patrol
5 officers coming to me telling me about some of the
6 evidence, receiving information from the supervisors
7 on the scene, telling me more information, you know,
8 the individual, the victim, has been transported to
9 the hospital. The investigators are arriving on the
10 scene and I speak to investigators and try to build
11 up information. And then I walk -- do an
12 examination of the crime scene to see what needs to
13 be done.

14 **Q** Did you do that in this case?

15 **A** Yes.

16 **Q** And after you did your walk-through
17 examination, what did you do next?

18 **A** I then began to take photographs and then place
19 markers out to identify the different locations of
20 some of the shell casings that were there on the
21 scene. And then once I took the photographs, I
22 collected evidence.

23 **Q** Specifically, what did you collect from that
24 scene?

25 **A** If I recall, the majority of the items I did

1 collect from the scene were shell casings. I recall
2 there was one empty shell casing. There was about
3 16 shell casings -- what I mean unfired shell
4 casings, they were actually still the full bullet
5 unfired -- and a cell phone.

6 **Q** And how do you go about documenting where those
7 items were found?

8 **A** Basically, I place out placards, numbered
9 placards, and photograph it.

10 **Q** Did you bring your case file with you?

11 **A** Yes.

12 **Q** Did you make a diagram of what you collected in
13 showing the approximate location?

14 **A** Yes.

15 **Q** Do you have that with you?

16 **A** (Witness handed document to Mr. Graham.)

17 **MR. GRAHAM:** Your Honor, the State would offer
18 this diagram into evidence.

19 **MS. FULLWOOD:** No objection.

20 **THE COURT:** Without objection, State's 16.

21 (State's Exhibit Number 16, diagram, marked
22 and admitted into evidence.)

23 BY MR. GRAHAM:

24 **Q** Investigator Wise, State's Exhibit Number 16,
25 what is that?

1 **A** That is a diagram of the incident location and
2 the parking lot and numbered locations of my
3 placards of what -- and then a listing of evidence
4 of what was found in each numbered placard.

5 **Q** This is what you collected from the scene?

6 **A** Yes.

7 **Q** Are you able to read that from where you're --

8 **A** I have a copy, so I can look at them.

9 **Q** The front entrance of the Olive Garden, how is
10 that denoted on your diagram?

11 **A** As you see, I have, Front Door, at that
12 location right there, and that would be the front
13 part facing Harbison Boulevard.

14 **Q** So orienting your diagram to State's Exhibit
15 Number 13, where is the front door on State's 13?
16 Can you tell where Harbison Boulevard is?

17 **A** Yes, I can see it. It would be this location.
18 Right here would be the front door area.

19 **Q** Most of the items that you collected were where
20 on this photograph?

21 **A** The majority of the items I collected would be
22 basically in this general area right here where a
23 numerous amount of unfired shell casings were.

24 **Q** Going back to State's Number 16, which is a
25 diagram you prepared showing what you collected, can

1 you explain to the jury what you collected and the
2 approximate area of those?

3 **A** I'm sorry?

4 **Q** What you collected and where it was using your
5 diagram.

6 **A** Explain each one, sir?

7 **Q** Please.

8 **A** All right. We'll start off with the front,
9 number 18 would be the Samsung cell phone, victim's
10 phone.

11 We would go to this location here, which is
12 number one. Number one was a .22 caliber empty
13 shell casing.

14 And then we start here {indicating}. The
15 majority of these numbers from 2 to 17, 2 to 17 all
16 were .22 caliber unfired shell casings or
17 cartridges.

18 **Q** Item number one was what?

19 **A** Item number one was a .22 caliber empty shell
20 casing.

21 **Q** Let me show you a stack of photographs and ask
22 if you recognize these?

23 **A** Yes. Picture number one --

24 **Q** Well, just look through the whole stack first?

25 **A** Oh, I'm sorry.

1 **Q** Do you recognize those photographs?

2 **A** Yes, photographs of the shell casings I
3 collected.

4 **Q** These are actually photographs that you took as
5 well?

6 **A** Yes.

7 **MR. GRAHAM:** Your Honor, the State would offer
8 these in evidence at this time.

9 **MS. FULLWOOD:** No objection.

10 **THE COURT:** Without objection.

11 (State's Exhibit Numbers 17 through 23,
12 photographs, marked and admitted into evidence.)

13 BY MR. GRAHAM:

14 **Q** Investigator Wise, looking at State's Exhibit
15 Number 1 {sic}, what is that showing us?

16 **A** That is showing the parking lot area -- I can't
17 tell what placard that is.

18 **Q** Placard number one.

19 **A** That would be the location where the empty
20 shell casing, the .22 caliber empty shell casing was
21 located.

22 **Q** And if you were facing the building, is that to
23 the left or right?

24 **A** The building should be to the right, right
25 would be this area here would be the building. It

1 would be facing to the right. Well, actually, it
2 would be from the left side of the building.

3 **Q** State's Number 18, what am I seeing there?

4 **A** That is a close-up picture of that empty shell
5 casing.

6 **Q** When you say empty, what specifically is it
7 about that casing?

8 **A** It is a fired bullet. Basically, all you have
9 is the cartridge. The caliber bullet has already
10 been fired from that cartridge.

11 **Q** So after the gun is fired, the bullet -- I
12 mean, the fired cartridge case is left behind?

13 **A** Yes.

14 **Q** Does that happen with a revolver or a
15 semiautomatic or what do you know?

16 **A** From my knowledge, it would basically be from a
17 semiautomatic weapon revolver -- revolver, spin and
18 keep the shell casing. But from my knowledge, it
19 would be from a semiauto weapon that ejects the
20 round when fired.

21 **Q** State's Number 19, what does that show?

22 **A** That is the parking lot photo of where numerous
23 unfired shell casings were located at.

24 **Q** And, again, if you're looking at the diagram
25 that you drew, which is State's 16, those items are

1 where in relation to the front door and to the fired
2 casings?

3 **A** As you can see, like I said, the front door
4 area would be here. So they're actually to the
5 left -- well, if I stood in front of the Olive
6 Garden looking at it, it would be to the right side.
7 So looking at the front door, Olive Garden front
8 door, to the right side parking lot of Olive Garden.

9 **Q** On State's 19, each one of those placards
10 represents what?

11 **A** Each placard represents a number and from the
12 number would be a unfired shell casing.

13 **Q** State's number 20, is that a close up of what
14 we were just looking at in 19?

15 **A** Yes.

16 **Q** The placards there run from 2 through 14. So
17 what does each one of those placards represent?

18 **A** Each placard represents a .22 caliber unfired
19 cartridge.

20 **Q** State's Number 21, that is showing placard 14
21 and also placard 15. Placard 15 is what?

22 **A** 15 is a .22 caliber unfired cartridge.

23 **Q** State's Number 22, that's showing a placard 16
24 and 17, and what are those?

25 **A** 16 and 17, a .22 caliber unfired cartridge.

1 Q And where were those cartridges found?

2 A They're actually located -- there's a back
3 roadway that goes behind Olive Garden and they were
4 located on the roadway.

5 Q So looking back on your State's 16, our State's
6 Exhibit Number 16 at the bottom left here, there's a
7 16 and 17?

8 A Yes. And like I said, this is actually a lane
9 or a roadway that travels behind Olive Garden.

10 Q Referring back to State's Number 13, the aerial
11 photograph, approximately where would the last two
12 unfired rounds be found?

13 A Would be probably in this general area right
14 here {indicating}.

15 Q State's Number 23, what does that depict?

16 A That is number two. That would be a .22
17 caliber unfired cartridge. Yeah, unfired cartridge.

18 Q Two through 17, I believe you testified they
19 were all unfired cartridges; is that correct?

20 A That is correct.

21 Q And we can put up more pictures, but the truth
22 is that each one of them would look very similar to
23 that with different numbers?

24 A Yes.

25 Q There was one additional item that you

1 collected from the scene. What was that?

2 **A** The other additional item would be number 18.

3 It was a Samsung cell phone.

4 **Q** State's Number 8, that's also a photograph that
5 you took as well, isn't it?

6 **A** Yes.

7 **Q** What do you see in that photograph under the
8 SUV?

9 **A** It appears to be, like I said, a yellow placard
10 under that SUV.

11 **Q** Does that correspond with the location that you
12 found on number 18?

13 **A** Yes.

14 **Q** And then State's Exhibit Number 9, is that a
15 close up of the phone that you recovered?

16 **A** Yes.

17 **Q** Let me show you State's Exhibit Number 12 and
18 ask if you recognize that?

19 **A** Yes. This is the phone I recovered.

20 **Q** That's the phone that's in the photograph
21 depicted on State's 9 and that you recovered under
22 the SUV at the Olive Garden on the night of December
23 29th of 2011?

24 **A** Yes.

25 **Q** Once you collected that phone, what did you do

1 with it?

2 **A** Once all items were collected, once I had
3 finished with the crime scene, I transported the
4 items back to police headquarters. I spoke with
5 Investigator Reese and advised him of what I had
6 collected from the scene. At which time, we spoke
7 of a phone. There was information, I recall, that
8 the victim was on the phone just prior to him being
9 shot.

10 And then, at that point in time, if I recall,
11 Investigator Reese notified another investigator,
12 Van Houten, who is specialized and trained and has
13 the equipment to remove information from a cell
14 phone. He was notified, called to Columbia Police
15 Headquarters. At which time, the phone was
16 presented to Investigator Van Houten and, at which
17 time, he downloaded information from that phone.

18 **Q** And you were present when he did that?

19 **A** Yes.

20 **Q** And you kept that phone from the time you
21 collected it until the time that Investigator Van
22 Houten extracted the information from the phone?

23 **A** Yes. There may be times I gave it to
24 Investigator Reese to look at the phone. I may have
25 left the room at times on the second floor, but I

1 maintained control of that phone the majority of the
2 time. Like I said, once Investigator Van Houten had
3 downloaded information from the phone, I then took
4 the phone and placed it down in our crime scene lab
5 for security.

6 **Q** In addition to the phone that we have here, did
7 you also bring the fired casing and the unfired
8 casing that you collected as well?

9 **A** Yes. I brought all casings.

10 **Q** And where are those at?

11 **A** They should be located on top of the box in
12 those two envelopes.

13 **Q** These right here?

14 **A** Yes.

15 This is number one. This would be the empty
16 shell casing.

17 **Q** Do you recognize that item?

18 **A** Yes.

19 **Q** And is that the item that -- is that the fired
20 casing that you collected from the parking lot of
21 the Olive Garden that's depicted as number one in
22 your diagram?

23 **A** Yes.

24 **MR. GRAHAM:** Your Honor, the State would offer
25 this in evidence.

1 **MS. FULLWOOD:** No objection, Your Honor.

2 **THE COURT:** Without objection.

3 (State's Exhibit Number 24, fired casing,
4 marked and admitted into evidence.)

5 BY MR. GRAHAM:

6 **Q** And then how about the unfired cartridges?

7 **A** Each unfired cartridge is actually individually
8 packed, that way what happens is when I collect the
9 cartridges, I actually put my placard number on
10 there so I can actually identify, if somebody wanted
11 to know what was number ten, I could go and pull out
12 info with my plaque number and able to identify what
13 shell casing that was.

14 **Q** So what numbers of envelopes -- the numbers
15 that you wrote on there correspond to your placards
16 in the photos?

17 **A** Yes.

18 **Q** So do you have before you number 2 through
19 number 17?

20 **A** Yes.

21 **Q** And those are all items that you collected?

22 **A** Yes.

23 **Q** And that's your handwriting with those numbers
24 on them?

25 **A** Yes.

1 **Q** And those are the unfired .22 rounds that you
2 collected from the Olive Garden the night of
3 December 29, 2011?

4 **A** Yes.

5 **MR. GRAHAM:** Your Honor, the State would offer
6 all of those in evidence.

7 **MS. FULLWOOD:** I don't have an objection. I
8 suggest just for simplicity to put them all in some
9 type of envelope or package and put them in as one
10 exhibit.

11 **MR. GRAHAM:** And that's how they are, Your
12 Honor.

13 **THE COURT:** All right. Mark those as a whole
14 in that envelope as the next State's Exhibit.

15 (State's Exhibit Number 25, unfired
16 cartridges, marked and admitted into evidence.)
17 BY MR. GRAHAM:

18 **Q** Investigator Wise, after you collected all of
19 these items from the scene, did the unfired casings,
20 the ones that we just referred to, did those -- were
21 those sent to SLED for DNA analysis?

22 **A** If I recall, all the items were sent to SLED.

23 **Q** And are you aware that SLED swabbed all of
24 those cartridges and were unable to develop any type
25 of DNA profile off of it?

1 **A** To my knowledge, yes, that is correct. They
2 swab it there. And, to my knowledge, no DNA was
3 found.

4 **Q** Did you have an opportunity to compare item
5 number one, when you looked at them just now, to
6 compare -- were some photographs taken comparing
7 item number one, the fired casing to the other .22
8 rounds, which were your placard numbers 2 through
9 17, were they compared and were photos taken of them
10 showing the comparison?

11 **A** Yes.

12 **Q** Let me show you those and ask if you recognize
13 these as being accurate of the items that you
14 collected that night?

15 **A** Yes.

16 **MR. GRAHAM:** Your Honor, the State would offer
17 these three photographs in evidence.

18 (Pause.)

19 **MS. FULLWOOD:** No objection.

20 **THE COURT:** Without objection.

21 (State's Exhibit Numbers 26 through 28,
22 photographs, marked and admitted into evidence.)
23 BY MR. GRAHAM:

24 **Q** Investigator Wise, State's Exhibit Number 26,
25 what does that depict?

1 **A** To your left is showing the empty shell casing.
2 And to your right is what I was talking about, an
3 unfired cartridge.

4 **Q** And those are the items -- those are
5 photographs of the items that you collected,
6 correct?

7 **A** Yes.

8 **Q** State's Number 27, what do we see there?

9 **A** To the left, like I was saying, was a .22 Rem
10 cartridge and that's to the left. And then to the
11 right, as you can see, that is a fired Rem .22
12 caliber cartridge.

13 **Q** When you say Rem cartridge, what do you mean?

14 **A** To my knowledge, Rem should represent
15 Remington.

16 **Q** So we're talking about the R-e-m?

17 **A** Yes.

18 **Q** Is that also known, that area of the cartridge
19 case, is that called a headstamp?

20 **A** Yes.

21 **Q** All of the items that you collected, the fired
22 and the unfired cartridge cases, did all of them
23 have the same headstamp?

24 **A** Yes.

25 **Q** On the one on State's 27 on the right, there's

1 an indention in the case, what is that?

2 **MS. FULLWOOD:** Unless he has some sort of
3 expertise in bullets, I'd object, in firearms.

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 **THE COURT:** Sustain Ms. Fullwood's objection,
8 and then you may continue.

9 BY MR. GRAHAM:

10 **Q** State's Number 28, what does that show,
11 Investigator Wise?

12 **A** It shows an unfired cartridge. And if you can
13 see on the top, the hollow-point.

14 **Q** Talking about right here {indicating}?

15 **A** Yes.

16 **Q** What is a hollow-point?

17 **MS. FULLWOOD:** Again, I object unless he has
18 some expertise in ballistics.

19 **MR. GRAHAM:** Your Honor, he's not a ballistics
20 expert. He's fired guns for over 20 years.

21 **MS. FULLWOOD:** Well, he hasn't said that.

22 **THE COURT:** What was the question?

23 **MR. GRAHAM:** I asked him what a hollow-point
24 was.

25 **THE COURT:** Overruled. I can answer that.

1 **THE WITNESS:** Basically, it's a center hole in
2 the caliber.

3 BY MR. GRAHAM:

4 **Q** And what's the purpose of a hollow-point?

5 **A** Mushrooms and cause more damage.

6 **MR. GRAHAM:** Thank you, Investigator Wise.
7 Please answer any questions the defense has.

8 CROSS-EXAMINATION

9 BY MS. FULLWOOD:

10 **Q** Sir, did you send those cartridges or casings
11 or bullets for -- to get dusted for fingerprints?

12 **A** Yes, ma'am. A lot of times we sent all the
13 cartridges to SLED. And when I do an analysis, I'll
14 go ahead and, I recall, go ahead and check for DNA
15 and fingerprints. And so I allow SLED to do all
16 that.

17 **Q** Okay. So you did check these bullets for
18 fingerprints?

19 **A** As far as I recall, like I said, I sent them to
20 SLED for that, ma'am.

21 **Q** Okay. And there were none, were there?

22 **A** To my knowledge, no, ma'am.

23 **Q** As a matter of fact, you took a sample of
24 Mr. Wardlaw's DNA to SLED yourself, didn't you?

25 **A** That is correct.

1 **Q** And there's nothing in this case that contains
2 his fingerprints or his DNA to your knowledge?

3 **A** To my knowledge, that is correct.

4 **MS. FULLWOOD:** Thank you, sir.

5 **THE COURT:** Any redirect?

6 **MR. GRAHAM:** No, Your Honor.

7 **THE COURT:** All right. Thank you very much,
8 sir. You may step down.

9 We're going to take a break at this point. So,
10 ladies and gentlemen, please have no conversation
11 about the case. If you need anything while you're
12 back there, any snacks or anything like that, just
13 let the bailiffs know and we'll try to accommodate
14 you with regards to that stuff, okay. And we're
15 just going to take a short break and we'll start
16 back in a little bit.

17 (The jury retires to the jury room.)

18 **THE COURT:** All right. We'll take a break.

19 (Brief recess.)

20 **THE COURT:** Is the State ready?

21 **MR. GRAHAM:** State's ready, Your Honor.

22 **THE COURT:** Defense ready?

23 **MS. FULLWOOD:** Ready, Your Honor.

24 **THE COURT:** Let's bring the jury in, please.

25 (The jury returns to the courtroom.)

1 **THE COURT:** All right. A couple of things,
2 folks, before we get started: I checked with the
3 Clerk downstairs who had checked with the county
4 administrator and everything and we anticipate
5 being -- having a full day. They said that they've
6 got people out, that the roads are all fine, they're
7 just wet. The temperature's up and so it just looks
8 bad out there. So the roads are fine.

9 The other thing is, just to expedite things and
10 to maybe hopefully make things easier for you, I'm
11 having her bring lunch in for you. So you don't
12 have to go out for that, so -- and we'll do that.
13 We'll have a few more witnesses and then we'll do
14 that.

15 All right. If you'll recall, when we took the
16 break, the State was still presenting their case.
17 And so I recognize Mr. Graham for your next witness.

18 **MR. GRAHAM:** Thank you, Your Honor. The State
19 calls Dr. Janice Ross.

20 **THE COURT:** Dr. Ross, if you'd please come
21 around to be sworn.

22 JANICE EDWARDS ROSS,
23 having been duly sworn, testified as follows:

24 **THE CLERK:** Once you're on the stand, Doctor,
25 state your full name, spelling your last, please.

1 **THE WITNESS:** Janice Edwards Ross, R-o-s-s.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 **Q** Dr. Ross, where are you employed, ma'am?

5 **A** In Newberry, South Carolina, with Newberry
6 Pathology Associates.

7 **Q** What does Newberry Pathology Associates do?

8 **A** We are a forensic pathology team and we do
9 autopsies for coroners of the state at their
10 request.

11 **Q** You said --

12 **MS. FULLWOOD:** Your Honor, I stipulate to Dr.
13 Ross' qualifications as an expert in the field of
14 forensic pathology.

15 **THE COURT:** All right. Ladies and gentlemen,
16 Ms. Fullwood has agreed, a stipulation is an
17 agreement, that the doctor is qualified to testify
18 as an expert in the field of forensic pathology.
19 And simply what that means is typically witnesses
20 are not allowed to testify as to their opinions.
21 However, with regards to expert testimony, because
22 of the doctor's experience and expertise in a
23 particular area of science, she is qualified to
24 testify as an expert in that area. And so an expert
25 is allowed to give their findings and then explain

1 their opinion as it relates to those findings. So
2 that's the difference between an expert witness and
3 a lay witness.

4 I'll tell you when I instruct you on the law
5 and I'll tell you now, you give an expert witness'
6 testimony whatever weight you think it deserves. An
7 expert's opinion or testimony is to be given no
8 greater weight simply because they're an expert.
9 You give it whatever weight you feel that it
10 deserves as you do all testimony, okay.

11 Mr. Graham, you may proceed.

12 **MR. GRAHAM:** Thank you, Your Honor.

13 BY MR. GRAHAM:

14 **Q** Dr. Ross, what is forensic pathology?

15 **A** A forensic pathologist is a doctor who
16 specializes in doing autopsies for the purpose of
17 medical/legal examinations to determine a cause and
18 manner of death on a person who has been violently
19 killed or killed in -- or dead in an unknown manner.
20 So we are trained specifically to do an autopsy to
21 identify patterns of injury and as well as natural
22 diseases to, again, formulate the cause and manner
23 of death.

24 **Q** Did you have the occasion to perform a forensic
25 autopsy on Thomas Hoefer on December 30th of 2011?

1 **A** Yes.

2 **Q** In general terms, would you describe what you
3 do in a forensic autopsy?

4 **A** Yes. The body is brought to us in a body bag
5 at our morgue in Newberry County Memorial Hospital.
6 We open the bag, identify the person, take
7 photographs and identify any clothing present. We
8 then take pictures of the front and back, nude body,
9 identify any kind of injuries present. In this
10 case, there was evidence of a gunshot wound. So we
11 did x-rays to identify whether or not a bullet was
12 still present in the body.

13 **Q** In your external examination, were you able to
14 determine approximate height and weight of
15 Mr. Hoefer?

16 **A** Yes. We measured him at 72 inches, which is
17 six feet tall. We don't have a scale in the morgue,
18 but we estimated 145 pounds.

19 **Q** In your external examination of Mr. Hoefer's
20 body, were you able to find the evidence of a
21 gunshot wound?

22 **A** Yes.

23 **Q** And can you tell the jury what you found?

24 **A** There was an entrance gunshot wound in the left
25 chest above the left nipple. And then when we did

1 an internal examination, we found that that bullet
2 went front to back and slightly downward and
3 slightly to the right. It went through the left
4 lung and caused a lot of hemorrhage. The bullet
5 itself was found in the back underneath the skin.

6 **Q** Let me show you two photographs and ask if you
7 recognize them?

8 **A** Yes.

9 **Q** Are they fair and accurate depictions of
10 evidence that you found during your autopsy of
11 Mr. Hoefer?

12 **A** Yes.

13 **MR. GRAHAM:** Your Honor, the State would like
14 to introduce these two photographs in at this time.

15 **MS. FULLWOOD:** No objection.

16 **THE COURT:** Without objection.

17 (State's Exhibit Numbers 29 and 30,
18 photographs, marked and admitted into evidence.)

19 BY MR. GRAHAM:

20 **Q** Dr. Ross, State's Number 29, what are we
21 looking at there?

22 **A** It's the entrance gunshot wound above the left
23 nipple and the front of the chest.

24 **Q** Specifically, do you know the measurements of
25 where that was?

1 **A** It was 16 inches below the top of the head and
2 four and a half inches to the left of midline.

3 **Q** Sixteen and a half inches below and then how
4 much to the left of midline?

5 **A** Four and a half inches to the left of midline.

6 **Q** You had talked about -- you recovered the
7 projectile; is that correct?

8 **A** Correct.

9 **Q** State's Number 30, what does that show?

10 **A** That is the bullet, led bullet, that we took
11 out from beneath the skin of the back of Mr. Thomas
12 Hoefer.

13 **Q** Can you describe the bullet path?

14 **A** Yes. Front to back, slightly downward and
15 slightly to the right. So we took the bullet away
16 -- out of the skin 21 and a half inches below the
17 top of the head, which is another five and a half
18 inches from the entrance wound, and two inches to
19 the left of midline.

20 **Q** What are defensive wounds?

21 **A** Defensive wounds are generally what we describe
22 as wounds on the arms or the forearms or hands that
23 may indicate that the person was trying to defend
24 themselves from a weapon or from an assault.

25 **Q** Did you see any evidence of defensive wounds on

1 Mr. Hoefer?

2 **A** No, I did not.

3 **Q** Other than the gunshot to Mr. Hoefer, did you
4 find anything else wrong with him that would be a
5 cause of death?

6 **A** No, I did not.

7 **Q** The gunshot -- the path of the bullet itself,
8 why did Mr. Hoefer die?

9 **A** He went -- he bled out from the bullet piercing
10 and perforating the lung, the left lung.

11 **Q** Approximately, how long would that have taken?

12 **A** A matter of minutes. It depends on a lot of
13 things, but maybe five to six minutes.

14 **Q** So the cause of Mr. Hoefer's death was what?

15 **A** Exsanguination, which means to bleed out due to
16 the laceration of the lung due to the gunshot wound
17 of the chest.

18 **Q** And the manner of death, how would you classify
19 that?

20 **A** The manner of death is homicide.

21 **MS. FULLWOOD:** I object to that, that invades
22 the province of the jury.

23 **THE COURT:** I'm sorry?

24 **MS. FULLWOOD:** I'd object to manner of death,
25 that invades the province of the jury.

25 Q Okay. And isn't it true that when you're

1 talking about a shooting, most of the time you can't
2 give any opinion about where the person shot was in
3 relation to the person who is doing the shooting
4 because there's just so many variables that
5 determine the trajectory of a wound like that?

6 **A** Yes. We can state whether a certain position
7 is possible or not, but we -- just looking at the
8 wound, we can't say exactly how they were standing.

9 **Q** Okay. And you can't say --

10 **A** Or sitting or whatever.

11 **Q** And you can't really say that in this case
12 either, correct?

13 **A** Correct.

14 **MS. FULLWOOD:** Okay. Thank you, ma'am. That's
15 all.

16 **MR. GRAHAM:** No other questions, Your Honor,
17 and ask that she be excused.

18 **THE COURT:** Any objection?

19 **MS. FULLWOOD:** No objection.

20 **THE COURT:** Thank you very much, ma'am. You're
21 free to go.

22 **MR. GRAHAM:** State's next witness, Your Honor,
23 is John Van Houten.

24 **MS. FULLWOOD:** Your Honor, we didn't hear the
25 last name of that witness.

1 **MR. GRAHAM:** Van Houten, H-o-u-t-e-n.

2 JOHN VAN HOUTEN,

3 having been duly sworn, testified as follows:

4 **THE CLERK:** Have a seat up here, please, sir.

5 Once you're seated, speak up loud and clear. State
6 your full name, spelling your last.

7 **THE WITNESS:** John Van Houten, V-a-n
8 H-o-u-t-e-n.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 **Q** Mr. Van Houten, where are you employed, sir?

12 **A** I'm employed by the Columbia Police Department.

13 **Q** And what do you do for the Columbia Police
14 Department?

15 **A** I am a full-time task force officer for
16 computer forensics with the U.S. Secret Service.

17 **Q** Does that mean you're second into the Secret
18 Service as well?

19 **A** Yes. I hold dual credentials, one for
20 enforcing state and local laws and one for enforcing
21 federal laws.

22 **Q** And what is it specifically that you do for the
23 City of Columbia and the Secret Service?

24 **A** My primary function is computer forensics and
25 cell phone forensics, that is my primary. My

1 secondary is federal financial crimes.

2 **Q** Specifically, cell phone forensics, what is
3 that?

4 **A** It is the acquisition of data that is stored,
5 can be stored on a cell phone, cellular device,
6 obtaining the information in a forensic or a sound
7 manner.

8 **Q** Have you ever been qualified as an expert in
9 cell phone forensics?

10 **A** No.

11 **Q** What kind of training or education do you have
12 in cell phone forensics?

13 **A** I've attended Mississippi State University
14 Computer Forensic Research Center, the National
15 White Collar Crime Center, Federal Law Enforcement
16 Training Center, National Computer Forensic
17 Institute.

18 **Q** How many different classes do you think you've
19 attended regarding cell phone forensics?

20 **A** Maybe four. Cell phone forensic and computer
21 forensic is somewhat similar in nature in that the
22 code that is used is similar.

23 **Q** What other training and education do you have
24 either with an educational background or experience
25 or societies or things like that that you're

1 involved in regarding cell phone forensics?

2 **A** I'm A-certified from Access Data, certified
3 computer forensic examiner. I've attended college
4 education at Florence-Darlington Technical College,
5 other than what service and training the Secret
6 Service provides for me. My training and
7 certificates is supported and funded 100 percent by
8 the U.S. Secret Service.

9 **Q** How many phones have you extracted data from?

10 **A** Last count is well over 200.

11 **Q** And what's the process of you doing that? How
12 do you get information out of a cell phone?

13 **A** It depends on the circumstance. It depends on
14 the case. Usually an agency will approach myself or
15 submit a phone for examination to the Columbia field
16 office, the U.S. Secret Service request for
17 examination. We do requests from federal agencies,
18 military, state and local law enforcement agencies.
19 Once a phone is submitted, we have various tools and
20 equipment that we can utilize to recover the data on
21 the device.

22 **Q** Did you recover data from a phone found in this
23 case?

24 **A** Yes.

25 **MS. FULLWOOD:** Your Honor, I have a matter of

1 law.

2 **THE COURT:** I'm sorry?

3 **MS. FULLWOOD:** I have a matter of law. Perhaps
4 if we could approach, we might be able to resolve
5 it.

6 **THE COURT:** All right. Come on up.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 BY MR. GRAHAM:

11 **Q** Investigator Van Houten, did you have an
12 opportunity to extract data from the cell phone in
13 this case?

14 **A** From the actual device, yes.

15 **Q** Let me show you State's Number 12 and ask if
16 you recognize that phone?

17 **A** I'm going to remove the back to verify.

18 **Q** Please.

19 **A** Yes, I examined this phone.

20 **Q** How do you know that?

21 **A** The IMEI number, which is -- it's like an
22 identifying number assigned to each phone, matches
23 the cell phone forensic report.

24 **Q** So the number on that actual phone matches the
25 report that came out when you extracted the data?

1 **A** That is correct.

2 **Q** Do you remember when and where you were when
3 you extracted that information?

4 **A** This phone, I was on the second floor -- I was
5 actually called in late at night on the 29th, I
6 believe, of -- right around midnight, which would
7 have been the 30th of December 2011, to process a
8 phone. And I did the -- most of my equipment is
9 portable, so I brought it with me. And I processed
10 the phone in the conference room, the second floor
11 of police headquarters.

12 **Q** When you talk about equipment and you talk
13 about extracting and processing the phone, can you
14 explain that process?

15 **A** Yes. We have -- we use various tools and
16 equipment. This equipment costs over a hundred
17 thousand dollars. This allows us to examine a
18 phone, to recover the data without altering the data
19 or without destroying the information on the phone.

20 Basically, in this particular case, I used a
21 Cellebrite system, which is the most common system
22 that most agencies use. All it involves is booting
23 up the phone. Depending on whether you want a
24 physical exam or a logical exam, in this case, this
25 was a logical examine, just hooking a cable up,

1 determining -- making sure that the IMEI numbers
2 match up with what the machine is telling me and the
3 machine processes the data. I verify the data that
4 the machine prints out or gives me. I verify it
5 with the phone itself, make sure the call logs
6 match, the photos match, text messages match and
7 things of that nature.

8 **Q** And were you able to hook up the Cellebrite
9 equipment to this Samsung phone and to download
10 information off of it?

11 **A** Yes, a logical examination was conducted on
12 this phone.

13 **Q** And did you generate a report or did the
14 Cellebrite machine generate a report based on that
15 information?

16 **A** That's correct, yes.

17 **Q** And then you verified it?

18 **A** Yes.

19 **Q** And do you have a copy of that report with you?

20 **A** I do.

21 **Q** And does that include the phone examination
22 report properties, the incoming call list, the
23 outgoing call list and the missed calls?

24 **A** That is correct, it does.

25 **Q** And that's the information that you extracted

1 off of that Samsung phone, State's Number 12?

2 **A** Yes.

3 **MR. GRAHAM:** Your Honor, the State would offer
4 that report into evidence at this time.

5 **MS. FULLWOOD:** I'd like to examine it first.

6 (Pause.)

7 **MS. FULLWOOD:** No objection.

8 **THE COURT:** All right. Without objection.

9 (State's Exhibit Number 31, phone record,
10 marked and admitted into evidence.)

11 BY MR. GRAHAM:

12 **Q** Are you able to see that up there?

13 **A** Yes.

14 **Q** Here on the front, this is the first page of
15 the report that came out. That's obviously your
16 name, right?

17 **A** Yes.

18 **Q** As we move down, what kind of information are
19 we seeing here?

20 **A** It describes the type of device that is being
21 examined in this case. It's a Samsung GSM, which
22 most GSMs use SIM cards.

23 **Q** The number that you were talking about that you
24 knew that the actual physical phone, State's 12, was
25 this phone generating a report, what number was that

1 -- I mean, what --

2 **A** IMEI number.

3 **Q** Right there?

4 **A** Yes.

5 **Q** And that's unique to each phone?

6 **A** Yes.

7 **Q** And then down below we've got the extraction
8 date and time; is that correct?

9 **A** That's correct.

10 **Q** Looks like it took about five minutes to get
11 the information off of it?

12 **A** Yes.

13 **Q** The phone number for this phone, how is that
14 represented on your report?

15 **A** That is the MSISDN number. That number is the
16 -- MSISDN number for that phone is 803 404 -- yeah
17 (803) 404-4419.

18 **Q** One of the reports that you generated off of
19 that incoming call list; is that correct?

20 **A** Yes.

21 **Q** What is an incoming call list?

22 **A** It is -- the incoming call is stored on the
23 device or itself. These are the calls that the
24 telephone itself received from an out -- an outside
25 source, another phone.

1 **Q** So, for instance, number one here is listed as
2 an incoming call. What number was calling that
3 phone?

4 **A** 803 -- sorry -- an incoming phone from
5 telephone number (803) 363-7542.

6 **Q** And approximately -- well, not approximately --
7 on what date and time did that phone record that
8 that incoming call from that number occurred?

9 **A** December 29th, 2011, at 8:53 p.m. eastern
10 standard time.

11 **Q** So the fact that that's number one, what does
12 that tell us?

13 **A** That was the last call.

14 **Q** That was the last incoming call?

15 **A** That was the last incoming call that was
16 answered from that device.

17 **Q** Now, does that mean that it went to voice mail
18 or that someone actually answered that?

19 **A** No, that was an actual contact. The green
20 button or the send button was hit and communication
21 or contact was made.

22 **Q** So the two phones were talking. It wasn't a
23 voice mail?

24 **A** No, it was not a voice mail.

25 **Q** Item number two, the second to last incoming

1 call, what phone number was that received from?

2 **A** The same number, (803) 363-7542.

3 **Q** And the time and date of that call?

4 **A** December 29th, 2011, at 8:47 p.m.

5 **Q** Now, you're saying 8:47 p.m. The document
6 itself says 2047. What does that -- explain --

7 **A** The document is showing in 24-hour format.
8 2000 hours is eight o'clock p.m.

9 **Q** Eight o'clock a.m. would be what?

10 **A** 0800.

11 **Q** The third to last incoming call, the phone
12 number of that was from?

13 **A** Again, from the same number, (803) 363-7542.

14 **Q** And the time and date of that?

15 **A** December 29th, 2011, at 2045 or 8:45 p.m.

16 **Q** The fifth to last incoming call, what phone
17 number was that from?

18 **A** That was also from area code (803) 363-7542.

19 **Q** And the time and date of that call?

20 **A** December 29th, 2011, at 1957 or 7:57 p.m.

21 **Q** There's a column for names. And in the phone
22 numbers that we were just talking about, that 7542
23 number, there's an N slash A, what does that mean?

24 **A** That means under the name list, if the device
25 itself, if the user of the device has entered a

1 contact name for that number, every time that that
2 number comes up, a name would be associated with it.
3 In this case, this was not in the contacts file of
4 the phone, so there is no name associated with it.

5 **Q** In addition to those -- fifth call, is there
6 also, I believe, call number 16? Do you see that as
7 well?

8 **A** I do.

9 **Q** That is an incoming call. That's from the same
10 number as well?

11 **A** That is correct.

12 **Q** And what time and date was that call?

13 **A** December 29th, 2011, at 1211 p.m., which is 12
14 noon 11 minutes after.

15 **Q** Now, it doesn't -- how many calls are there for
16 incoming calls that were captured and able for you
17 to download?

18 **A** Because it's a logical examination, it captured
19 30 calls.

20 **Q** In addition to incoming calls, were you also
21 able to keep track of outgoing calls?

22 **A** Yes.

23 **Q** And what did your examination find as far as
24 the last outgoing call?

25 **A** Outgoing call was also to the number (803)

1 363-7542.

2 Q And the date and time of that?

3 A December 29th, 2011, at 2057 or 8:57 p.m.

4 Q The second to last outgoing call, who was that
5 number made to?

6 A That was also made to area code (803) 363-7542
7 and that call was December 29th, 2011, at 2050 or
8 8:50 p.m.

9 Q The third outgoing call was to the same number;
10 is that correct?

11 A That is correct.

12 Q And the time of that outgoing call?

13 A The same date, that is eight -- I'm sorry --
14 2026 or 8:26 p.m.

15 Q And, again, how many outgoing calls were you
16 able to capture?

17 A Because it's a logical, 30.

18 Q In addition to the incoming and outgoing, you
19 were also able to capture missed calls; is that
20 correct?

21 A Yes.

22 Q That's what we're showing here; is that
23 correct?

24 A Yes.

25 Q There are missed calls on the third and fourth

1 to last missed calls on this phone.

2 **A** Correct.

3 **Q** Were what date and time?

4 **A** That was December 29th, 2011, at 1539 or 3:39
5 p.m. Missed call number four was on December 29th,
6 2011, at 1537 or 3:37 p.m.

7 **Q** So the missed calls are the calls that aren't
8 answered or the calls that go to voice mail; is that
9 correct?

10 **A** No connection has occurred.

11 **Q** There's no connection. If it's an incoming or
12 outgoing call, those are connected calls; is that
13 correct?

14 **A** That's correct.

15 **MR. GRAHAM:** Thank you, Investigator Van
16 Houten. Please answer any questions Ms. Fullwood
17 has for you.

18 **MS. FULLWOOD:** No questions, Your Honor.

19 **THE COURT:** Thank you very much, sir. You may
20 step down.

21 **MR. GRAHAM:** And, Your Honor, Investigator Van
22 Houten will be recalled later on a different matter.

23 **THE COURT:** All right.

24 **MR. GRAHAM:** State calls Charlie Sizemore next.

25 *****

1 CHARLES SIZEMORE,
2 having been duly sworn, testified as follows:

3 **THE CLERK:** Once you're seated, state your full
4 name, spelling your last on the record, please.

5 **THE WITNESS:** My name is Charles Sizemore, and
6 that's S-i-z-e-m-o-r-e.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 **Q** Mr. Sizemore, where are you employed, sir?

10 **A** I'm with PTA-FLA, Incorporated, doing business
11 as Clear Talk in Columbia.

12 **Q** What is Clear Talk?

13 **A** We are a flat-rate prepaid mobile service
14 provider. We serve as the carrier and the retailer
15 for cellular services focusing mainly on the
16 Columbia area.

17 **Q** What is your job with, and I'm going to use
18 Clear Talk because there's a lot of words before
19 that, what is your job for Clear Talk?

20 **A** I'm the general manager.

21 **Q** As part of your job as general manager, you're
22 also basically in charge of all the records that are
23 kept by Clear Talk?

24 **A** Absolutely.

25 **Q** That would include account information and

1 actual billing and detail records for every phone
2 call made through Clear Talk; is that correct?

3 **A** That's correct.

4 **Q** Pursuant to a search warrant, were you able to
5 find Clear Talk records dealing with the phone
6 number (803) 363-7542 and supply those to law
7 enforcement and actually bring them to court today?

8 **A** That's correct, I was.

9 **Q** Were you able to and do you have those records
10 with you?

11 **A** Yes. I brought a copy of what was provided.

12 **Q** If I may see that.

13 **A** (Witness complies.)

14 **Q** And these are the records of your company; is
15 that correct?

16 **A** That's correct.

17 **MR. GRAHAM:** Your Honor, the State would offer
18 these into evidence at this time.

19 **MS. FULLWOOD:** May we approach?

20 **THE COURT:** Yes, ma'am.

21 (Whereupon, a bench conference was held off
22 the record, in the presence of the jury, but out of
23 the hearing of the jury.)

24 **THE COURT:** So no objection?

25 **MS. FULLWOOD:** No, Your Honor.

1 **THE COURT:** All right. Without objection, that
2 will be State's 32.

3 (State's Exhibit Number 32, Clear Talk phone
4 records, marked and admitted into evidence.)

5 BY MR. GRAHAM:

6 **Q** Mr. Sizemore, these records have now been
7 marked as State's Number 32 that are in evidence and
8 I want to ask you some questions about it. Were you
9 able to determine who the account holder was for the
10 telephone number (803) 363-7542 from your records?

11 **A** Yes, we were.

12 **Q** And who is the account holder?

13 **A** The account holder is a Sharon Wardlaw.

14 **Q** And what address is listed for Ms. Wardlaw?

15 **A** That's [REDACTED], I believe that's [REDACTED] Road.

16 **COURT REPORTER:** Can you spell that?

17 **THE WITNESS:** M-e-t-z-e Road in Columbia, South
18 Carolina, 29210.

19 BY MR. GRAHAM:

20 **Q** Were you able to -- can you determine from the
21 records when that account was created?

22 **A** This account was created on December the 5th of
23 2011.

24 **Q** The records that you have, are you able to
25 capture -- or were you able to capture detail call

1 records?

2 **A** Yes, we were.

3 **Q** And when I use that term, what does that mean?

4 **A** Detail call records include the number that
5 performed the dialing, the number that received the
6 call, the time, the duration of the call, and, also,
7 typically we capture data such as the location of
8 the call, the general tower that the call is being
9 placed off of.

10 **Q** In addition there, do you have records -- you
11 were talking about cell towers. Can you just
12 basically explain what a cell tower is and what a
13 cell tower does?

14 **A** Yes, certainly. Actually, a cell tower,
15 throughout the Columbia area, we've created a grid
16 of what I would call cells. For every cell, there
17 are typically three towers that service a cell and
18 your phone will connect to the cell tower which its
19 receiving the strongest signal, you know, barring
20 high traffic on that particular tower. So the
21 towers will actually, you know, that's how we carry
22 data back to our gateway which then sends it to our
23 switch location to connect the call to the various
24 carriers that we also interconnect with.

25 **Q** In the call detail records, you identified that

1 that tower information will be recorded; is that
2 correct?

3 **A** That's correct.

4 **Q** How is that denoted in the call records
5 themselves in the detail? What is the name of the
6 column that deals with that?

7 **A** Actually, that one, I'm not an expert on the
8 tower location; more we can identify the trunk that
9 it was sent out over, but that would probably take a
10 network engineer to tell you.

11 **Q** When we look at the detail records, though,
12 there are two columns. One is a caller cell ID and
13 one is a called cell ID.

14 **A** That's correct.

15 **Q** What do you recognize those numbers as being?

16 **A** The calling MDN, or mobile directory number,
17 that is the number that placed the originating call
18 to the second column; the called MDN, or mobile
19 directory number, the individual's phone that
20 received the call.

21 **Q** Let me see if I can direct you toward a record,
22 a call detail record on December 29th of 2011. And
23 in the middle of the page, there's a call
24 approximately at, let's list it as, 5:59:14 p.m.

25 **A** Okay. You said December the 29th?

1 **Q** Yes, sir.

2 **A** December the 29th at what time?

3 **Q** 5:59 and 14.

4 **A** Okay. Yes.

5 **Q** Do you see that one?

6 **A** Yes, I do.

7 **Q** Let me show you this document and ask if it's
8 the same as what you're referring to?

9 **A** 5:59 and 14 seconds, yes, it is.

10 **Q** Does this whole sheet appear to be the same as
11 the sheet that you have before you?

12 **A** Yes, it is.

13 **Q** Mr. Sizemore, if you would look on your sheet
14 to a call at 12/29 at 4:58:47 p.m. Do you see that
15 call?

16 **A** Yes, I do.

17 **Q** The time on there, that is listed in what time
18 zone?

19 **A** That's going to be Pacific time.

20 **Q** So 4:58:47 p.m. Pacific time, we would add
21 three hours to it to be an eastern standard time?

22 **A** Yes, 7:58.

23 **Q** The calling MDN number, what does that column
24 stand for?

25 **A** The calling MDN is the individual that

1 originated the call, that made the call.

2 **Q** The called MDN number?

3 **A** Is the termination, so the individual that
4 received the call.

5 **Q** Now, for the served IMSI number, they all
6 appear to be the same. Why is that?

7 **A** Say that again, please.

8 **Q** The called -- the served IMSI number all appear
9 to be the telephone number associated with this
10 account; is that correct?

11 **A** Yes. The served MC is the -- is our customer
12 that's being served on our switch, yes.

13 **Q** The call type, they're either incoming or
14 outgoing. What does that tell us?

15 **A** It's incoming or outgoing depending upon the --
16 so 7542 is our customer. So it depends upon whether
17 they're getting an incoming or outgoing call.

18 **Q** If they make a call, it would be denoted as?

19 **A** Outgoing.

20 **Q** And if they receive a call?

21 **A** Incoming.

22 **Q** The next column says, Call duration in seconds.
23 What does that column tell us?

24 **A** That column tells us the exact duration of the
25 call, you know, assuming that the call was

1 connected.

2 **Q** The call duration around it, what does that
3 mean?

4 **A** That's for billing purposes. Generally cell
5 carriers round up in there.

6 **Q** The next two columns are the incoming and
7 outgoing trunk. That's what you were referring to
8 if we wanted an explanation of that, we needed to
9 talk to an engineer; is that correct?

10 **A** Yes, that's correct.

11 **Q** The cellular cell ID and the called cell ID,
12 those are actual tower numbers that service the
13 call; is that correct?

14 **A** That's correct.

15 **Q** And in addition to these call detail records,
16 you actually have records that give, included up
17 there with that exhibit, that give the actual either
18 street address or the GPS location for those; is
19 that correct?

20 **A** I would say that's correct; however, I don't
21 have that in -- every cell site in Columbia begins
22 with a two and we can pinpoint the location of that
23 cell tower if I've got the address list.

24 **Q** Specifically, if we look on here at 12/29/2011
25 at 5:59 and 14 seconds, do you see that call?

1 **A** Yes, I do.

2 **Q** What can you tell me about that call? What
3 time was it in eastern standard time here in
4 Lexington, South Carolina?

5 **A** That would have been at 8:59 p.m., that call
6 made. (803) 404-4419 was the originator of that
7 call calling (803) 363-7542. That call lasts,
8 duration was seven seconds.

9 **Q** And are you able to determine what cell tower
10 was used on that? What number that goes along with
11 the tower of that call?

12 **A** It was cell site 2108.

13 **Q** The bottom of the page, there are also
14 additional calls and they are listed at 9:08 and 24
15 seconds and 32 seconds. Do you see those calls?

16 **A** At 9:08?

17 **Q** The last two calls on the page.

18 **A** Yes, I do.

19 **Q** Those calls are actually made, if we adjust for
20 eastern standard time, are at 12:08 a.m. on the
21 30th; is that correct?

22 **A** That's correct.

23 **Q** And can you tell me who's calling what numbers
24 there?

25 **A** The calling party was (803) 363-7542 and they

1 were dialing 479-7988. And the absence of the area
2 code, it was not dialed.

3 **Q** Now, when we talk about call duration there,
4 what is that recording?

5 **A** So those were two-second and a four-second
6 call, meaning that voice mail picked up and the call
7 was terminated then.

8 **Q** The following sheet, you have three calls on
9 that that's still listed, by your records, for the
10 29th, but have actually moved over into the 30th.
11 Do you have that page?

12 **A** Yes, I do.

13 **Q** Tell me about those last three calls.

14 **A** Okay. Specifically, I've got additional call
15 records. So what were the times on those?

16 **Q** This would be at 9:09 and 19 seconds on the
17 29th.

18 **A** Okay. The 9:09 and 19 seconds, it was phone
19 number 363-7542 calling 609-8821, that was another
20 two-second call. Immediately following that at 9:09
21 and 34 seconds, 363-7542 dialed the same number,
22 609-8821, that call lasted for 47 seconds.

23 **Q** And then the final call listed at 12 -- on
24 December 29th at 9:16:07.

25 **A** Yes. That was (803) 363-7542 calling 479-7988

1 and lasting 18 seconds.

2 **Q** And, again, those are in Pacific times, so we
3 would add three hours to get eastern standard time?

4 **A** That's correct.

5 **Q** Is that correct?

6 **A** That's correct.

7 **MR. GRAHAM:** Thank you, Mr. Sizemore. Please
8 answer any questions that Ms. Fullwood has for you.

9 **MS. FULLWOOD:** No questions, Your Honor.

10 **THE COURT:** Thank you very much, sir. You may
11 step down.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 **THE COURT:** All right. Ladies and gentlemen,
16 I'm informed that your lunch has arrived, so we will
17 break for lunch.

18 Now, during the time that you're back there for
19 lunch, as always, have no conversation about the
20 case, just enjoy your lunch. You know, I typically,
21 during the lunch break where we bring lunch in for
22 you, I don't want you to get cabin fever being in
23 that room, so if any of you would like to go out,
24 and I don't know if you want to stand outside, but
25 if you want to go out and get a little air or

1 whatever, you just let the bailiffs know. If you do
2 that, you must go together.

3 Now, it doesn't mean all of you have to go, but
4 like, for example, if say five or six of you want to
5 go, you must all go together and remain, you know,
6 with the bailiffs. But you can't have communication
7 with anyone or go to your car or anything like that.
8 But, anyway, during that lunch break, if you need to
9 do that, just let the bailiffs know.

10 So I'm going to excuse you now to let you go
11 ahead and have lunch and ask everyone to remain
12 seated while the jury's excused.

13 (The jury was excused for lunch.)

14 **THE COURT:** All right. We'll be in recess now
15 while the jury eats. Let me ask y'all to maybe be
16 back in about 30, 40 minutes or whatever. We'll see
17 where they're at and we'll get started whenever
18 they're done eating. But I do want y'all to go
19 ahead and get something. So we'll start back, let's
20 say, a quarter till 2:00 we'll start back, that will
21 give you about 48 minutes.

22 (Whereupon, there was a luncheon recess.)

23 (State's Exhibit Number 33, cell tower
24 locations, marked for identification.)

25 **THE COURT:** Just for scheduling purposes, we

1 got an e-mail that the Chief Justice has cancelled
2 court for tomorrow. And what I intend to do, unless
3 something changes, is at the end of today, to send
4 this panel home with the instruction to call the
5 number to the clerk's -- the jury number, to call
6 that number at nine o'clock on Thursday morning.
7 And we'll just plan -- we'll plan on a delayed start
8 Thursday unless the weather knocks us out of
9 Thursday, but we'll plan on that and hopefully we'll
10 be able to do that. And, you know, if the weather
11 does cooperate and ease up, maybe we can, you know,
12 start at 11 o'clock Thursday morning or something
13 like that.

14 All right. Anything we need to take up before
15 we bring the jury out?

16 **MR. GRAHAM:** No, Your Honor. There was a
17 document that Mr. Sizemore from Clear Talk
18 Communication was going to introduce. He didn't
19 have it in his possession when he was sitting up
20 there. It's the cell tower locations that actually
21 tells you where the physical address where those
22 towers are that were on those other sheets. He's
23 out there to testify, but Ms. Fullwood says that
24 she'll stipulate to this going in.

25 **THE COURT:** So there's no objection?

1 **MS. FULLWOOD:** Right.

2 **THE COURT:** All right. Well, it'll be entered
3 in -- have you marked it yet?

4 **MR. GRAHAM:** I have, Your Honor. I was just
5 going to -- when the jury comes in, I'll do it so
6 they can hear me say it and then we can move right
7 on.

8 **THE COURT:** Okay. Let's bring the jury out
9 then.

10 (The jury returns to the courtroom.)

11 **THE COURT:** All right. Ladies and gentlemen,
12 we're ready to start back. When we broke, we were
13 still on the State's case. I'll recognize Mr.
14 Graham for his next witness.

15 **MR. GRAHAM:** Thank you, Your Honor.

16 Mr. Sizemore, who was with Clear Talk
17 Communication, did not have a document in his
18 possession. It was the list of the -- that
19 described where the actual cell towers were
20 physically located. He's out in the hall, but Ms.
21 Fullwood has agreed to stipulate to the introduction
22 of the documents that explains where the tower
23 locations are physically at.

24 **THE COURT:** All right. Is that correct, Ms.
25 Fullwood, no objection to that document?

1 **MS. FULLWOOD:** No objection, Your Honor.

2 **THE COURT:** All right. Then we'll admit that
3 in evidence as State's 33, okay.

4 (State's Exhibit Number 33, cell tower
5 locations, admitted into evidence.)

6 **MR. GRAHAM:** Thank you, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. HUBBARD:** Thank you, Your Honor. The State
9 calls Brian Zwolak.

10 BRIAN ZWOLAK,
11 having been duly sworn, testified as follows:

12 **THE CLERK:** Once you're seated, state your full
13 name, spelling your last on the record.

14 **THE WITNESS:** My name is Brian Zwolak. The
15 last name is spelled Z-w-o-l-a-k.

16 DIRECT EXAMINATION

17 BY MR. HUBBARD:

18 **Q** And where do you work?

19 **A** I work for the City of Columbia Police
20 Department as an investigator.

21 **Q** Do you work in any particular unit?

22 **A** Intel unit.

23 **Q** Back in January 19th, 2012, were you asked to
24 do anything pertaining to this case?

25 **A** Yes. On that date, we received information

1 that a suspect in the case we were working was
2 located out at a Colony Forest Apartment, which was
3 in Bailey Street off of West Beltline. And we had
4 an individual watching the surveillance -- from the
5 police department watching the surveillance video
6 trying to locate Mr. Wardlaw in the apartment
7 complex.

8 **Q** And the case you're obviously working on, is
9 this the Olive Garden --

10 **A** It's the homicide from Olive Garden, that's
11 correct.

12 **Q** The Colony Apartments, you mentioned Beltline?

13 **A** Correct, yeah. It's Bailey Street. It's off
14 of West Beltline right near Farrow Road. It's an
15 apartment complex.

16 **Q** You also mentioned something about a camera or
17 something like that. Can you tell us how it
18 operates out there?

19 **A** The apartment complex has a set of surveillance
20 cameras that cover the apartment complex, and
21 because of the issues we've had out there, the
22 apartment complex gives us access to watch the video
23 in real time and adjust the cameras so we can watch
24 what's going on out there especially when we have
25 complaints. At this time, we had someone from the

1 police department watching the video knew we were
2 looking for Mr. Wardlaw and observed him walking out
3 of an apartment in the area that we had a tip that
4 he was at. At which point, when he started moving,
5 he called for assistance to apprehend Mr. Wardlaw.

6 **Q** So you were one of the officers that responded?

7 **A** That's correct.

8 **Q** Were you there when he was arrested?

9 **A** I was. I pulled up, I didn't actually put the
10 handcuffs on him, but I observed him being arrested
11 and taken into custody.

12 **Q** Was he arrested in the apartment or was he
13 arrested outside or how far away from the complex?

14 **A** He had started walking from the apartment,
15 towards the front of the apartment complex. It was
16 about two parking lots towards the roadway, main
17 roadway, up from the apartment.

18 **Q** After he was arrested, what did you do?

19 **A** Once he was arrested, I immediately went over
20 to the apartment that he was seen coming from by the
21 officer that was watching the surveillance video.

22 **Q** I'm going to show you a photograph, see if you
23 recognize this as the apartment that you went to.

24 **A** Yes, I do.

25 **Q** What's the number of that apartment complex?

1 **A** It's going to be [REDACTED] Street.

2 **MR. HUBBARD:** Your Honor, I offer this into
3 evidence at this time.

4 **MS. FULLWOOD:** No objection.

5 **THE COURT:** Without objection.

6 (State's Exhibit Number 34, photograph,
7 marked and admitted into evidence.)

8 BY MR. HUBBARD:

9 **Q** It's kind of hard to see on the overhead. It
10 darkens it a little bit. But that's the apartment
11 complex or the door that he was seen coming out of?

12 **A** That's correct.

13 **Q** When you went to that residence, was anybody
14 there?

15 **A** Yes, an individual that rented the apartment
16 named Ce Kia Bolton. She was at the door when we
17 con -- when we knocked on the door, that's who we
18 made contact with inside.

19 **Q** Did you tell her why you were there?

20 **A** Yes. We told her about Mr. Wardlaw. She
21 stated she knew him and that he'd came from there.
22 At that point in time, I asked her to come out --

23 **MS. FULLWOOD:** Objection; hearsay.

24 **THE COURT:** Sustained as to any hearsay.

25 BY MR. HUBBARD:

1 **Q** Let me ask you this, let's back up a little
2 bit.

3 **A** All right.

4 **Q** Were you able to confirm if there was -- if she
5 knew the name Gonzales Wardlaw?

6 **A** Yes, we were.

7 **Q** Having done that, did you ask her if you could
8 search her residence?

9 **A** We did. We asked her if we had consent to go
10 in the residence and check the residence. She did
11 give consent. She also signed a consent form for us
12 to go in and check the residence.

13 **Q** When you went in the residence, is this -- how
14 many bedrooms; do you recall?

15 **A** It's two bedrooms. You walk in and there's a
16 living room. There's two bedrooms off to your left,
17 a bathroom and a kitchen on the back of the
18 apartment with a closet off the kitchen.

19 **Q** And as to that closet off the kitchen, were you
20 directed by the -- Ms. Bolton to any particular
21 place?

22 **A** Yes. To the back -- to the kitchen closet, the
23 closet off the kitchen, that's where Mr. Wardlaw's
24 stuff was placed.

25 **Q** Let me show you another photograph, see if you

1 recognize this as what you found in that closet.

2 **A** That's correct.

3 **MR. HUBBARD:** Your Honor, I offer this into
4 evidence.

5 **THE COURT:** Any objection?

6 **MS. FULLWOOD:** No objection, Your Honor.

7 **THE COURT:** All right. Without objection.

8 (State's Exhibit Number 35, photograph,
9 marked and admitted into evidence.)

10 **MR. HUBBARD:** State's 35, Your Honor.

11 BY MR. HUBBARD:

12 **Q** This is going to be really, really dark here.
13 I don't know if you can really make it out there.
14 It appears there's some papers there. What are
15 those papers on?

16 **A** A suitcase, a black suitcase with some clothes,
17 and then there were five sheets, I believe, five
18 sheets of paper on top.

19 **Q** And the five sheets, how many of them had
20 writing?

21 **A** The front page, front and back.

22 **Q** Front and back. So that paper there is what
23 you found and then there were some blank sheets
24 behind it?

25 **A** Correct.

1 **Q** Did you take a look and see what was on that
2 piece of paper?

3 **A** Yes, I did.

4 **Q** I'm going to show you, been marked as a Court's
5 Exhibit, Number 2, and see if you recognize that as
6 the paper you found in that kitchen closet.

7 **A** Yes, it is.

8 **Q** I want you to hang on to that for just a
9 second. And I want to show you two pieces of paper
10 that are blank on the back with some blacked out
11 areas. Do you recognize this as well?

12 **A** Yes. That's the same copy with just some
13 blacked out areas of writing.

14 **MR. HUBBARD:** Your Honor, I offer this at this
15 time for State's ID.

16 **MS. FULLWOOD:** Subject to my previous
17 objection.

18 **THE COURT:** All right.

19 (State's Exhibit Number 36, rap lyrics,
20 marked for identification.)

21 **MR. HUBBARD:** This is just for ID, Your Honor.

22 **THE COURT:** Right. It's not in evidence, but
23 it is marked so you can identify it with the
24 witness.

25 **MR. HUBBARD:** Yes, sir.

1 BY MR. HUBBARD:

2 Q Now, looking at State's ID 36, obviously we're
3 not going to get into the contents at this point in
4 time, but did you leave this at the residence or did
5 you take it?

6 A No, we took it.

7 Q As an officer, why would you take that piece of
8 paper?

9 A When I observed it and started reading it, I
10 immediately saw references to the case that was
11 pertinent to the case that we were working, the
12 homicide from Olive Garden.

13 Q Okay. I'm going to show you another
14 photograph. You were there when Mr. Wardlaw was
15 arrested?

16 A That's correct.

17 Q Is that how he appeared that day minus the
18 jacket?

19 A Yes, he did.

20 MR. HUBBARD: Your Honor, I offer this into
21 evidence.

22 MS. FULLWOOD: No objection.

23 THE COURT: Without objection.

24 (State's Exhibit Number 37, photograph,
25 marked for identification and admitted.)

1 **MR. HUBBARD:** State's 37, Your Honor.

2 BY MR. HUBBARD:

3 **Q** State's 37 shows how the defendant looked at
4 the time?

5 **A** Yes, sir.

6 **Q** White T-shirt, camo pants?

7 **A** Yes, sir.

8 **Q** Light facial hair on his face?

9 **A** Yes, sir.

10 **Q** Working in Intel, did you also check to see if
11 he had any social media, view social media?

12 **A** Right. When we work Intel, when we get
13 information on individuals just like in this case,
14 that's honestly one of the first places we go to
15 check.

16 **Q** In this case, was that Facebook?

17 **A** It is, yep.

18 **Q** Just like you to identify if this is what you
19 pulled up?

20 **A** Yes, this is it.

21 **MR. HUBBARD:** Your Honor, I'm just going to
22 mark this at this time for ID as well.

23 **THE COURT:** All right, sir.

24 (State's Exhibit Number 38, defendant's
25 Facebook page, marked for identification.)

1 **MR. HUBBARD:** Detective, I think that's all I'm
2 going to have at this time, but I do plan to call
3 you back later with leave from the Court to do that.
4 Please answer any questions the defense has.

5 **THE WITNESS:** Yes, sir.

6 CROSS-EXAMINATION

7 BY MS. FULLWOOD:

8 **Q** Ms. Bolton also had her boyfriend, her son, her
9 mother and her sister living in that apartment,
10 didn't she?

11 **A** I don't remember. When we talked to her, we
12 just asked her about who was there and she'd stated
13 that he'd just left. There was nobody else but her,
14 I believe, in that apartment when we were there.

15 **Q** When you were there?

16 **A** Correct. At the time we --

17 **Q** You don't know who all lived in that apartment?

18 **A** I don't recall how many people she said were
19 living in there.

20 **MS. FULLWOOD:** Okay. Thank you.

21 **THE COURT:** Thank you very much, sir. You can
22 step down.

23 **MR. HUBBARD:** State calls Ce Kia Bolton.

24 *****

25 *****

1 CE KIA BOLTON,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Once you're seated, speak up loud
4 and clear. State your full name, spelling your last
5 on the record, please.

6 **THE WITNESS:** My name is Ce Kia Bolton, C-e
7 K-i-a B-o-l-t-o-n.

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 **Q** Ms. Bolton, do you know Gonzales Wardlaw?

11 **A** Yes, sir.

12 **Q** How long have you known him?

13 **A** For about eight, nine years now.

14 **Q** Did y'all go to school together?

15 **A** Yes, sir.

16 **Q** How far back did y'all go to school together?

17 **A** Sixth grade.

18 **Q** Sixth grade. So you've known him for a good
19 while?

20 **A** Yes, sir.

21 **Q** How would you describe your relationship with
22 him?

23 **A** He was a good friend. I always have -- I
24 always had his back, you know, helped each other
25 with homework and stuff. He was a real good friend.

1 **Q** Did he ever refer to you -- or how did he refer
2 to you?

3 **A** He call me by my name Kia or call me as his
4 sister.

5 **Q** So is that -- sometimes you'd treat him like a
6 brother and he would treat you like a sister. Is
7 that kind of the relationship you had?

8 **A** Yes, sir.

9 **Q** Where did you live back in December of 2011 and
10 January of 2012?

11 **A** [REDACTED] Street known as the Colonies.

12 **Q** I'm going to show you a picture that's State's
13 34. Is that your residence?

14 **A** Yes, sir.

15 **Q** And back in January of 2012, who was living at
16 that residence with you and living in that residence
17 at that time?

18 **A** Me, my son, my mother and my two sisters and
19 Gonzales.

20 **Q** When did Mr. Gonzales move in with you?

21 **A** It was December the 30th, two days before New
22 Years.

23 **Q** So it was just right before the New Years?

24 **A** Yes, sir.

25 **Q** Prior to that, would he ever come over to your

1 place?

2 **A** Yes, sir.

3 **Q** And had you ever told him anything about coming
4 over to your place or even staying in your place?

5 **A** Yes, sir. Because I know him and his
6 grandmother used to, you know, have problems, such
7 as just teenagers and their parents, and I had told
8 him, Anytime, you know, you can come stay with me
9 just to avoid the arguments and stuff.

10 **Q** So your door was open?

11 **A** Yes, sir.

12 **Q** Where did his grandmother live? Do you
13 remember what the name of that street was?

14 **A** Crane Forest, Pelican Drive.

15 **Q** Okay. And you say he showed up December 30th?

16 **A** Yes, sir.

17 **Q** Now, did he call you before showing up or did
18 he just show up and knocked on your door?

19 **A** No, sir. He just showed up at my back door. I
20 remember it like it was yesterday.

21 **Q** Was it daytime or nighttime?

22 **A** Nighttime.

23 **Q** So the night of December 30th, 2011, he showed
24 up. What, if anything, did he have with him?

25 **A** A black suitcase.

1 **Q** Okay. It's kind of hard to see in this
2 picture, State's 35, but do you see that black
3 suitcase?

4 **A** Yes, sir, in my closet.

5 **Q** Which closet was this black suitcase in?

6 **A** Basically like a pantry closet where my kitchen
7 is.

8 **Q** Uh-huh. What else would you keep in that
9 closet?

10 **A** Me and my child clothes, my mother and my
11 sister summer clothes, toys, blankets.

12 **Q** So everybody that lived there had access to
13 that closet?

14 **A** Yes, sir.

15 **Q** And, Ce Kia, he's a friend. Was he paying
16 rent?

17 **A** No, sir.

18 **Q** He wasn't on the lease?

19 **A** No, sir.

20 **Q** He just needed a place to stay?

21 **A** Yes, sir.

22 **Q** Now, when he showed up December 30th, that
23 night, did he indicate how long he'd be staying?

24 **A** Yes, sir. He just told me just a couple of
25 weeks, about like four or five weeks, like a month.

1 **Q** And did he indicate where he'd be going after
2 that?

3 **A** Yes. He stated he was going to Colorado with
4 his baby mother.

5 **Q** So he has a child, and the baby's mama and they
6 were in Colorado?

7 **A** Yes, sir.

8 **Q** So after staying with you for a little while he
9 was going to move out west?

10 **A** Yes. He said he was waiting on his tax money
11 to come and he was going to move. He had offered me
12 some money for letting him stay there, but I told
13 him, No, it's fine, you know, just give it to your
14 child.

15 **Q** Where did he actually stay in your apartment?

16 **A** In the living room.

17 **Q** Now, did you have a sofa or a pull-out bed or
18 anything for him?

19 **A** No, sir. I had blankets.

20 **Q** So where did he sleep?

21 **A** In the living room, like, basically, like where
22 my front door is to the corner.

23 **Q** On the floor?

24 **A** Yes, sir.

25 **Q** Because the other rooms were filled; is that

1 correct?

2 **A** Yes, sir.

3 **Q** You got your mama there and you mentioned your
4 son?

5 **A** Uh-huh.

6 **Q** And who else?

7 **A** And my two sisters, they slept in a room with
8 my mother, and my son slept with me. He wouldn't
9 sleep on his own at the time.

10 **Q** How old was your son at the time?

11 **A** My son was, like, just turning three.

12 **Q** Now, in that photograph I showed you with the
13 black suitcase, which is State's 35, do you see some
14 writings on there?

15 **A** Yes, sir.

16 **Q** Were those your writings?

17 **A** No, sir.

18 **Q** While Mr. Gonzales was staying with you, what,
19 if anything, would you observe him doing?

20 **A** Excuse me?

21 **Q** While he was staying with you, what, if
22 anything, would you observe him doing while he's --

23 **A** He used to write, write raps. I knew him for
24 doing that for a long time. He always wanted to
25 rap. And he used to go off outside and I guess hang

1 out.

2 Q Okay. So during the day, where would he go?

3 A I wouldn't know. He'd just be like, Sis, I'll
4 be back in a little bit, and that was it.

5 Q So y'all went your own ways during the day?

6 A Yes, sir.

7 Q But in the evenings or when he was there at
8 home, you would observe him writing?

9 A Uh-huh. And we will talk and stuff.

10 Q Okay. Did you observe -- while he's there from
11 December 30th until his arrest, January 19th, did
12 you observe him writing?

13 A Yeah.

14 Q Now, you've known him since sixth grade?

15 A Uh-huh.

16 Q Have you ever known him to write songs before?

17 A Yes, sir.

18 Q Rap songs?

19 A Yes, sir.

20 Q Did you ever assist him in that?

21 A Yes. He used to ask me, you know, how this
22 sound to me, you know, do I like it.

23 Q So you would read over it?

24 A Uh-huh.

25 Q In this case, that piece of paper in the

1 closet, did you ever read that?

2 **A** No, sir.

3 **Q** I want to show you what's marked as Court's
4 Exhibit Number 2. Do you recognize the handwriting
5 on this paper?

6 **A** Yes, sir.

7 **Q** Whose handwriting is that?

8 **A** Gonzales Wardlaw.

9 **Q** Now, I want to show you what's been marked
10 State's ID Number 36 that has blacked out marks. Is
11 that the same thing as Court's Exhibit Number 2?

12 **A** Yes, sir.

13 **Q** Has it just got blacked out areas?

14 **A** Yes, sir.

15 **Q** Looking at State's ID 36, whose handwriting do
16 you see?

17 **A** Gonzales.

18 **Q** And you've known him since sixth grade?

19 **A** Yes.

20 **Q** Did you ever do homework together?

21 **A** Yes, sir.

22 **Q** You wrote things together?

23 **A** Yes, sir.

24 **Q** You read his writing before?

25 **A** Yes, sir.

1 **Q** You even read his rap songs before?

2 **A** Yes, sir.

3 **MR. HUBBARD:** Your Honor, I offer this in
4 evidence.

5 **THE COURT:** This is which one now?

6 **MR. HUBBARD:** State's 36 that I had marked for
7 ID.

8 **MS. FULLWOOD:** Subject to my prior objection.

9 **THE COURT:** All right. Overruled; I'll allow
10 it.

11 (State's Exhibit Number 36, rap lyrics,
12 admitted into evidence.)

13 BY MR. HUBBARD:

14 **Q** When Gonzales Wardlaw showed up at your place,
15 did he have a car?

16 **A** No, sir.

17 **Q** Did you have any idea how he got around?

18 **A** No, sir.

19 **Q** Did he have a phone?

20 **A** Yes, sir.

21 **Q** Do you recall his number or any part of that
22 number he would use?

23 **A** I remember 363.

24 **Q** 363, and that's all you remember?

25 **A** Yes, sir.

1 **Q** It's been two years?

2 **A** Yeah.

3 **Q** I want to show you State's 37, picture of
4 Mr. Wardlaw; is that correct?

5 **A** Yes, sir.

6 **Q** Now, wearing the T-shirt and camo pants, you've
7 known him for a long time, is this how he dressed?

8 **A** Yes, black and white shirts.

9 **Q** And camo pants?

10 **A** Yes, sir.

11 **Q** And is this how he appeared about the time he
12 showed up and started living with you?

13 **A** Yes, sir.

14 **Q** I'm going to ask you one other thing. I've got
15 marked as State's 38 ID, a Facebook page. Does that
16 look familiar?

17 **A** Yes, sir.

18 **Q** Whose Facebook page is this?

19 **A** Gonzales.

20 **Q** Gonzales Wardlaw?

21 **A** Yes, sir.

22 **MR. HUBBARD:** Nothing further at this time.

23 Please answer any questions the defense has.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MS. FULLWOOD:

3 Q Ms. Bolton.

4 A Yes, ma'am.

5 Q At the time we're talking about, you had a
6 boyfriend, didn't you?

7 A Yes, ma'am.

8 Q And did he sometimes stay at your house, too?

9 A Yes, ma'am.

10 Q All right. About how often?

11 A Every now and then he'll come stay.

12 Q Okay. Did he sometimes have his clothes over
13 there and whatnot?

14 A Yes, ma'am.

15 Q All right. Now, how old are you? You're young
16 enough I can ask that I think.

17 A I'm about to be 21 next month.

18 Q You're almost 21. So you've known Gonzales
19 since you were about 13 or so?

20 A Sixth grade, yeah.

21 Q Okay. And he's about your age, maybe a little
22 bit older?

23 A Yes, ma'am.

24 Q All right. Now, he wasn't a very good student,
25 was he?

1 **A** Yeah. He did his work. He listened.

2 **Q** Well, he didn't go too far in school, did he?

3 **A** No, ma'am.

4 **Q** That's right. And, in fact, he never even
5 finished the ninth grade, did he?

6 **A** I don't think so.

7 **Q** Okay. So, I mean, it wasn't too long after you
8 and him started knowing each other, only two or
9 three years, before he completely dropped out of
10 school, didn't he?

11 **A** Uh-huh.

12 **Q** And y'all didn't always go to the same schools,
13 did you?

14 **A** Oh, no, ma'am.

15 **Q** So y'all really wouldn't be doing the same
16 homework together, would you?

17 **A** Yes. When we was at a school together, yes, we
18 did. We was in the same classes together.

19 **Q** Was that in the sixth grade?

20 **A** Yes, ma'am.

21 **Q** But after that, you weren't in the same
22 classes, were you?

23 **A** Huh-huh.

24 **Q** So you wouldn't have any reason to do homework,
25 the same homework with him, would you?

1 **A** Huh-huh.

2 **Q** Okay. Now, about how many times do you think
3 you worked with him on his songs?

4 **A** Just I'd say about two, three times.

5 **Q** Okay. So you really haven't had that much of
6 an opportunity to see what his handwriting looks
7 like, have you?

8 **A** Yes, because in class, we did do work and stuff
9 together.

10 **Q** Okay. But that was in the sixth grade?

11 **A** Yes.

12 **Q** Okay. And that's when you're, what, 12 or 13?

13 **A** Yes, I remember.

14 **Q** Okay. And then -- but we're talking about now
15 when he's 20, right?

16 **A** Uh-huh.

17 **MS. FULLWOOD:** All right. Thank you very much.

18 **MR. HUBBARD:** No further questions.

19 **THE COURT:** Thank you, ma'am. You may step
20 down.

21 **MR. HUBBARD:** The State calls back Brian
22 Zwolak.

23 **THE COURT:** All right, sir. You're still under
24 oath.

25 **THE WITNESS:** Yes, Your Honor.

1 BRIAN ZWOLAK,
2 having been previously duly sworn, resumed the
3 witness stand and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q Detective Zwolak, looking at State's 36, is
7 this the rap lyrics, again, that have been --
8 certain parts have been deleted?

9 A Yes, sir. Yes, it is.

10 Q Would you please, for the jury, publish what
11 you have in your hands and read it to the jury?

12 A Yeah. It starts off: SC metro, right above
13 Atlanta ho, straight out the metro, stacking dead
14 presidents, niggas sneak dis on the low, that's
15 irrelevant, hitting 'em in his chest and leave 'em
16 coughing up that yellow shit. Intelligent, they
17 can't see me like that Hella Kella bitch. Grandma
18 house the spot on Pelican. No face then no case.
19 News 10 no evidence. Caught 'em at the Olive Garden
20 munching on a breadstick.

21 Dipped in tree gear camo down like Rambo. Last
22 thing I'm worried about is running out of ammo.
23 Hollow tips flip, hit ya nigga and your main ho.

24 You think you playing with a fucking -- you
25 think you playing with, you fucking with something

1 dangerous, far off in the game like I'm going to
2 uranous. I'm going out with a bang, dis is so
3 spontaneous. Ain't going let shit go. Nothing I'm
4 going to let slide. You going to feel dat calico
5 tearing up your inside. Got to let that nigga know
6 fuck with me, he bound to die. I'm going to let dat
7 shit show watch on Channel 25. Hustling is the
8 prefix, killing is the suffix. Off da chain, you
9 bout to die if you cause disruptions. Shit is going
10 to get ugly when I got to busting. I'm going for da
11 kill. So if he live, it's conscious. Ain't no
12 asking questions. It ain't up for discussion. Keep
13 that iron up by my side. Boss you better hush it.

14 **Q** Detective, when you first picked this up and it
15 talks about hitting him in his chest --

16 **MS. FULLWOOD:** Your Honor, I have a matter of
17 law.

18 **THE COURT:** All right. Ladies and gentlemen,
19 let me get you to step into the jury room. Please
20 have no conversation about the case. I'll bring you
21 back out shortly.

22 (The jury retires to the jury room.)

23 **THE COURT:** Yes, ma'am.

24 **MS. FULLWOOD:** Your Honor, I'm going to object
25 that the State is, at this point, planning to have

1 this witness go over every line of those lyrics,
2 parse them and offer an interpretation for the jury.
3 The writing speaks for itself. The jury is
4 perfectly capable of reading it and deciding for
5 itself what it means. If you let that type of
6 evidence in, you are letting that witness invade the
7 province of the jury as the fact finders in the
8 case, and I think it's improper. I don't think it's
9 the type of interpreting a piece of art shall we
10 say.

11 **THE COURT:** I wouldn't call that art.

12 **MS. FULLWOOD:** Well, it's lyrics.

13 **THE COURT:** It's a writing.

14 **MS. FULLWOOD:** Interpretation of that type of
15 writing, you don't need an expert for that.

16 **THE COURT:** Okay. And I don't know -- I mean,
17 I don't know what he was going to do.

18 **MS. FULLWOOD:** I thought that's where we were
19 going.

20 **MR. HUBBARD:** What I was going to do was ask
21 him, because he said when he seized it, there was a
22 reason why he seized it, so I was going to go over
23 the fact that it mentioned somebody getting shot in
24 the chest. We don't have a stabbing or a beating
25 and it's not a head shot. It's shot in the chest.

1 That's a flag for them. It mentions Pelican Street,
2 the Olive Garden.

3 **THE COURT:** If that's his line of questioning,
4 you don't have an objection?

5 **MS. FULLWOOD:** No, sir. And I'm sorry to jump
6 the gun, but I didn't want to get out there
7 before --

8 **THE COURT:** No. It's a good objection. I know
9 what you were -- it's kind of like you can't unring
10 a bell and if you let him go down that road --

11 **MS. FULLWOOD:** Exactly.

12 **THE COURT:** So I don't have a -- but,
13 Mr. Hubbard, that's essentially -- you're basically
14 going to have this investigator point out the things
15 that caught his eye that caused him to take
16 possession of this?

17 **MR. HUBBARD:** Yes, sir, correct.

18 **THE COURT:** And found it relevant.

19 **MR. HUBBARD:** Basically following up to his
20 original testimony, yes, sir.

21 **THE COURT:** All right. As long as it's within
22 that context, I'll allow it.

23 Let's get the jury back in.

24 (The jury returns to the courtroom.)

25 **THE COURT:** All right. Thank you, ladies and

1 gentlemen, for your patience.

2 And, Mr. Hubbard, you may continue your
3 examination.

4 **MR. HUBBARD:** Yes, sir, Your Honor.

5 BY MR. HUBBARD:

6 **Q** Detective, looking at State's 36 again, when
7 you first saw this document in that kitchen closet,
8 were there things that caught your attention?

9 **A** Yes, sir.

10 **Q** To the investigation of the murder at the Olive
11 Garden?

12 **A** Yes, sir.

13 **Q** This section where it says, Hit him in his
14 chest and leaving him coughing up that yellow shit,
15 did you have information as to where the victim was
16 shot?

17 **A** Yes, in the chest.

18 **Q** Okay. It wasn't the head, leg, arm, back?

19 **A** No, in the chest.

20 **Q** Is that one of the red flags?

21 **A** That was the first one, that's correct.

22 **Q** It's mention of grandma and Pelican Street or
23 Pelican Drive. Did you have information as to where
24 Mr. Wardlaw was living prior to being at Bailey
25 Street?

1 **A** Yeah. I had a bunch of evidence showing that
2 he stayed on Pelican.

3 **Q** Now, where it talks about the news, News 10 and
4 later News 25, was this information about the murder
5 at Olive Garden, was that on the news?

6 **A** Yes, it was televised.

7 **Q** Okay. The tree gear camo down, what was he
8 arrested in?

9 **A** Camo.

10 **Q** And where is he from?

11 **A** Crane Forest.

12 **Q** Where it talks about something about running
13 out of ammo and hollow tips, were you aware of what
14 type of bullets were used to kill our victim?

15 **A** I knew that they were shell casings. I wasn't
16 sure what, but I knew that his girlfriend was with
17 him.

18 **Q** Okay. Where it mentions his main ho?

19 **A** Right. And that's the end of that verse.

20 **Q** And then the second verse is just talking about
21 his feelings?

22 **A** Correct.

23 **MR. HUBBARD:** That's all I have at this time,
24 Your Honor.

25 **MS. FULLWOOD:** No questions, Your Honor.

1 **THE COURT:** Thank you, sir. You may step down.

2 **MR. HUBBARD:** State calls Lindsey Glover.

3 LINDSEY RAPHAEL GLOVER,

4 having been duly sworn, testified as follows:

5 **THE CLERK:** Once you're seated, speak up loud
6 and clear, stating your full name, spelling your
7 last, please.

8 **THE WITNESS:** Lindsey Glover, G-l-o-v-e-r.

9 DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 **Q** Mr. Glover, please tell the jury what your
12 relationship to the defendant is, Gonzales Wardlaw.

13 **A** I'm his stepfather.

14 **Q** And his mother's name is what?

15 **A** Sharon Wardlaw.

16 **Q** Are y'all living together?

17 **A** Yes, sir.

18 **Q** How long have you and Sharon Wardlaw, the
19 defendant's mother, been together?

20 **A** Since '94.

21 **Q** How old was Gonzales Wardlaw when you and his
22 mom got together?

23 **A** Two.

24 **Q** Did y'all have a nickname for Mr. Wardlaw?

25 **A** Yes.

1 **Q** What was that?

2 **A** Snoop.

3 **Q** Snoop?

4 **A** Uh-huh.

5 **Q** Mr. Glover, I know you don't want to be here
6 today; is that correct?

7 **A** Yes, it is.

8 **Q** You love Mr. Gonzales?

9 **A** Yes, I do.

10 **Q** You love him like your son?

11 **A** Yes, I do.

12 **Q** And through the years, you may not have been a
13 perfect --

14 **MS. FULLWOOD:** Objection; leading.

15 **MR. HUBBARD:** I haven't asked the question yet.

16 **THE COURT:** Go ahead and ask your question.

17 BY MR. HUBBARD:

18 **Q** Through the years, you haven't been a perfect
19 stepfather, but have you tried to give him an
20 upbringing that's good?

21 **A** Yes, I have.

22 **MS. FULLWOOD:** Same objection. It's leading
23 and it's testimonial.

24 **THE COURT:** Sustained.

25 BY MR. HUBBARD:

1 **Q** What, if anything -- through the years, have
2 you tried to be a good father or not?

3 **A** Yes, I have.

4 **Q** The night of December 29th, 2011, where were
5 you that night?

6 **A** At home.

7 **Q** Who were you home with?

8 **A** Sharon.

9 **Q** Sharon, the defendant's mother, Sharon?

10 **A** Yes.

11 **Q** At some point that night, did you speak to
12 Snoop, Gonzales Wardlaw?

13 **A** Yes.

14 **Q** Was that by phone or did he come by the house?

15 **A** By phone.

16 **Q** Who was he calling for or did you call him?

17 **A** He called us.

18 **Q** He called y'all. Where were you at the time of
19 that phone call?

20 **A** In the bed.

21 **Q** In bed?

22 **A** Yes.

23 **Q** Was he calling for you or for his mother?

24 **A** For me.

25 **Q** And did you speak to him at that time on the

1 phone?

2 **A** Yes, I did.

3 **Q** Now, let me ask you, do you remember your cell
4 number at that time?

5 **A** Yes.

6 **Q** 479-7988, does that sound familiar?

7 **A** Yes.

8 **Q** Your cell phone, was it on or off at that time?

9 **A** It was off.

10 **Q** You cut it off to go to bed?

11 **A** Yes.

12 **Q** 609-8821, whose number was that?

13 **A** Sharon.

14 **Q** Is that the number that was called?

15 **A** Yes.

16 **Q** 363-7542, whose number was that?

17 **A** Snoop's.

18 **Q** Was that in your wife's name, but he used it?

19 **A** She bought it for him.

20 **Q** She bought it for him?

21 **A** Yes.

22 **Q** When did she buy it for him?

23 **A** I don't remember.

24 **Q** Okay. When he called that night and you spoke
25 to him on the phone, what did he want?

1 **A** He asked me could I do him a favor.

2 **Q** And what was that favor?

3 **A** He asked me could I come and pick him up and
4 take him to get a motel room because he had a girl
5 and he didn't have an ID.

6 **Q** Where did he ask you to come pick him up?

7 **A** Waffle House.

8 **Q** And where was that Waffle House?

9 **A** On Greystone.

10 **Q** Greystone?

11 **A** Yes.

12 **Q** When you got there, was he at that Waffle
13 House?

14 **A** Yes.

15 **Q** Who was with him?

16 **A** A young lady.

17 **Q** Had you ever met her before?

18 **A** No, I haven't.

19 **Q** Do you remember what her name was?

20 **A** No, I don't.

21 **Q** Was this fairly late at night?

22 **A** Yes, it was.

23 **Q** Would you say it's maybe before midnight or
24 some time thereabout or earlier?

25 **A** I can't remember.

1 **Q** Okay. That's fair enough. What car did you
2 take or what vehicle did you take to go pick him up?

3 **A** We were using a rental at the time.

4 **Q** A rental car?

5 **A** Yes.

6 **Q** Why was that?

7 **A** Because our car had been in a wreck.

8 **Q** What kind of rental car were you driving?

9 **A** A red Charger.

10 **Q** When you picked up Gonzales, did you also pick
11 up this girl?

12 **A** Yes, sir.

13 **Q** Where did y'all head to first?

14 **A** To Motel 6.

15 **Q** What, if anything, occurred at the Motel 6?

16 **A** Computers were down, so we couldn't get a room.

17 **Q** The computers at Motel 6 were down?

18 **A** Yes.

19 **Q** After you left Motel 6, where did you go?

20 **A** To the Red Roof.

21 **Q** The Red Roof Inn?

22 **A** Yes.

23 **Q** Where is that?

24 **A** Up the street from Motel 6.

25 **Q** Is that the Red Roof Inn on St. Andrews and 26?

1 **A** Yes.

2 **Q** It's right here, what used to be a comedy club
3 or something like that; does that sound right?

4 **A** Yes.

5 **Q** Okay. When you went to Red Roof, did you try
6 to get a room there?

7 **A** We did.

8 **Q** You did get a room?

9 **A** Yes.

10 **Q** Tell me about how you went about getting a
11 room. Who was trying to get the room, you --

12 **A** Me.

13 **Q** -- or Gonzales?

14 **A** Me.

15 **Q** You were the one with the ID?

16 **A** Right.

17 **Q** You were the one with the money?

18 **A** Yes.

19 **Q** Now, when you went in, did Gonzales go in with
20 you?

21 **A** No.

22 **Q** Where was he?

23 **A** He was in the car.

24 **Q** The girl that was with y'all, did she stay in
25 the car or did she come in, too?

1 **A** She stayed in the car.

2 **Q** And you said you finally did get a room?

3 **A** Yes.

4 **Q** Now, did you try to get one room and then get
5 another? How did that work?

6 **A** We went to get a room and the key that the lady
7 gave us wouldn't open.

8 **Q** What type of keys do they give you at Red Roof
9 Inn?

10 **A** The little, like the card.

11 **Q** The swipe card?

12 **A** Yeah.

13 **Q** So the first key she gave you did not open the
14 door?

15 **A** No.

16 **Q** So what did you do?

17 **A** I went back to the office. I explained to her
18 that it wouldn't open and she gave me another key.
19 She told me that the room was down -- next door to
20 the one that we just tried to get. So when I got
21 the key, I went back to the room, stuck it in and
22 the door opened.

23 **Q** I'm going to show you a receipt. Is this the
24 receipt from the Red Roof Inn with your name?

25 **A** Yes, it is.

1 **Q** And the date, December 29th, 2011 --

2 **A** Yes, it is.

3 **Q** -- going to December 30th, 2011?

4 **A** Yes, it is.

5 **Q** Your initials?

6 **A** Yes.

7 **Q** And is that your ID number or Snoop's?

8 **A** Mines.

9 **MR. HUBBARD:** Your Honor, I offer this in
10 evidence.

11 **THE COURT:** Any objection?

12 **MS. FULLWOOD:** No objection, Your Honor.

13 (State's Exhibit Number 39, Red Roof Inn
14 receipt, marked and admitted into evidence.)

15 **MR. HUBBARD:** Your Honor, this will be State's
16 39.

17 BY MR. HUBBARD:

18 **Q** That receipt has your address, is that correct,
19 Metze Road?

20 **A** Yes.

21 **Q** Where was Gonzales or Snoop living at that
22 time? Was he living at Metze Road?

23 **A** No, just off and on, like spending the night.

24 **Q** Where was he spending most of his time?

25 **A** I really can't tell you that.

1 **Q** Did he have a grandmother he lived with?

2 **A** Yes, he did.

3 **Q** Where did -- what road was that?

4 **A** Pelican Drive.

5 **Q** Pelican. All right. When you get the room and
6 you have a key that works, what do you do?

7 **A** I open the door to see if it worked, shut the
8 door back. I get in the car and I give him the key.

9 **Q** So now in the car, it's you, Gonzales Wardlaw
10 and this girl; is that correct?

11 **A** Yes.

12 **Q** What, if anything, does Gonzales say to you at
13 that time?

14 **A** He say he think he got hisself in some trouble.

15 **Q** At that point, does the girl stay in the car or
16 does she get out?

17 **A** She get out.

18 **Q** Did anybody tell her to get out of the car?

19 **A** Yeah.

20 **Q** Somebody did?

21 **A** Yeah.

22 **Q** Who told her to get out of the car?

23 **A** Snoop.

24 **Q** Snoop. When y'all were in the car, it's just
25 you and Snoop, are the windows up or down?

1 **A** They're up.

2 **Q** They're up?

3 **A** Yes.

4 **Q** Is this just a conversation between you and
5 Snoop at this point?

6 **A** Yes.

7 **Q** Mr. Glover, what does he tell you?

8 **A** He say he think he shot somebody.

9 **Q** He says he thinks he shot somebody?

10 **A** Yes.

11 **Q** Where does he say it took place?

12 **A** He didn't at first.

13 **Q** Did he eventually tell you where this occurred?

14 **A** I found out later on when I seen it on the
15 news.

16 **Q** Is this the Olive Garden?

17 **A** Yes.

18 **Q** What did you ask him when he told you he shot
19 somebody or he thinks he shot somebody?

20 **A** What the fuck was he thinking about.

21 **Q** What was his response, Lindsey?

22 **A** He didn't know.

23 **Q** Did he tell you what happened at the Olive
24 Garden?

25 **A** Yes.

1 **Q** I know this is tough for you and I know it's --

2 **A** You have no idea.

3 **Q** I know. But I've got to ask you this. What
4 did he tell you happened at the Olive Garden?

5 **A** He said he went to go purchase some marijuana
6 from Thomas.

7 **Q** From Thomas Hoefer?

8 **A** Yes.

9 **Q** Did he know Thomas or did he say?

10 **A** He didn't say, but, you know, later on there
11 was talk they all went to school together or
12 something.

13 **Q** Okay. When he went to buy marijuana from
14 Thomas, what did he say happened?

15 **A** He wasn't satisfied with what he gave him, so
16 he asked for his money back.

17 **Q** So Snoop wasn't satisfied with the marijuana he
18 got?

19 **A** Right.

20 **Q** So he wanted his money back?

21 **A** Right. He said Thomas told him that that was
22 it. There wasn't no giving no money back. Said
23 they exchanged a few more words, so he pulled it
24 out. He said when he pulled it out, Thomas reached
25 for it and it went off.

1 **Q** I'm going to ask you this: When you say he
2 pulled out, who's pulling something out?

3 **A** I'm assuming he did because he just said he
4 pulled out.

5 **Q** Snoop tells you, I pulled out?

6 **A** And Thomas reached for it.

7 **Q** He said he pulled out a pistol?

8 **A** He just said he pulled out and Thomas reached
9 for it.

10 **Q** Do you remember talking to law enforcement?

11 **A** Yes.

12 **Q** And telling them about him pulling out a gun?

13 **A** Yes. I mean, you already know that's what he
14 did, bro, because he said he pulled out.

15 **Q** Well, I'm asking you because you might
16 understand something, but I got to make it clear.

17 **A** Understand.

18 **Q** Okay. So I got to ask you the hard question.
19 You understood that that was a gun?

20 **A** Yes.

21 **Q** Did he end up telling you he shot Thomas?

22 **A** Yes.

23 **Q** Do you remember asking him why in the world he
24 did that?

25 **A** Yes.

1 **Q** What was his response?

2 **A** He wasn't going to let him take nothing from
3 him.

4 **Q** Snoop said he wasn't going to let Thomas take
5 anything from him?

6 **A** Yes.

7 **Q** Is that a yes?

8 **A** Yes.

9 **Q** Do you remember what he told you he did with
10 that gun?

11 **A** He said he tossed it.

12 **Q** Did he tell you where he tossed it?

13 **A** He said he tossed it in the river.

14 **Q** When he was talking to you about what happened
15 at the Olive Garden shooting Thomas, did he ever use
16 the word accident?

17 **A** No.

18 **Q** Did he ever mention a struggle or a fight?

19 **A** No.

20 **Q** Did he tell you how he got to the Waffle House?

21 **A** He said he got a ride.

22 **Q** Did he tell you something different at first?

23 **A** To get me out of the house?

24 **Q** No, no, no. About how he got from the Olive
25 Garden to the Waffle House. Did he ever say

1 something about walking?

2 **A** Yeah, but I knew better than that.

3 **Q** So that's what he said at first?

4 **A** (Witness nodded head.)

5 **Q** When you questioned him, is that what he told
6 you about he had a ride?

7 **A** (Witness nodded head.)

8 **Q** Is that a yes?

9 **A** Yes.

10 **Q** All of this takes place, all of this
11 conversation's in that rental car, just you and
12 Snoop?

13 **A** Yes.

14 **Q** After that conversation, does he stay at the
15 Red Roof Inn?

16 **A** I left him there.

17 **Q** You left him there. Where did you go?

18 **A** Home.

19 **Q** And when you got home, did you mention any of
20 this to Sharon?

21 **A** No.

22 **Q** Did you sleep that night?

23 **A** No.

24 **Q** The next day, Mr. Glover, what, if anything,
25 did you see on the news?

1 **A** The incident at the Olive Garden.

2 **Q** Did you learn about whether anybody had died or
3 not?

4 **A** Yes.

5 **Q** When you learned about that, what did you do?

6 **A** I called him.

7 **Q** You called Snoop?

8 **A** Yes.

9 **Q** What did you tell Snoop?

10 **A** I asked him, Was that at the Olive Garden on
11 Harbison?

12 **Q** What did he say?

13 **A** You already know.

14 **Q** That's what he said, You already know?

15 **A** Yes.

16 **Q** Did you mention that the fellow, Thomas, that
17 had been shot was dead?

18 **A** (Witness nodded head.)

19 **Q** Is that a yes?

20 **A** Yes.

21 **Q** What was his response?

22 **A** He said he knew. He said he saw it.

23 **Q** Where did he say he saw it?

24 **A** On TV.

25 **Q** On TV? Did you ask him what he was going to

1 do?

2 **A** Yes.

3 **Q** What did he say?

4 **A** He didn't know.

5 **Q** Did you have a time when you spoke to Sharon
6 Wardlaw and told her about this?

7 **A** After I talked to him.

8 **Q** So that's December 30th, the day after you had
9 taken him to the Red Roof?

10 **A** Yes.

11 **Q** That was the first she'd heard of it; is that
12 correct?

13 **A** Yes.

14 **Q** Did you have any other occasion to talk to
15 Snoop by phone?

16 **A** Just that time when I asked him. When I seen
17 it on TV and I asked him about it when I was riding
18 home on the city bus, I talked to him then, and that
19 was it.

20 **Q** Did you give him any advice?

21 **A** I told him to turn hisself in.

22 **Q** What was his response?

23 **A** He said he wasn't.

24 **Q** I'm going to show you what's been marked
25 Court's Exhibit 2, rap lyrics. Do you recognize the

1 handwriting here, Mr. Glover?

2 **A** Yes.

3 **Q** Excuse me?

4 **A** Yes.

5 **Q** Whose handwriting is this?

6 **A** Gonzales.

7 **Q** Gonzales?

8 **A** Yes.

9 **Q** Court's Exhibit 2 and State's 36, is that the
10 same thing, just got some black markings on it?

11 **A** Yes.

12 **Q** State's 36, that's Snoop's handwriting as well?

13 **A** Yes.

14 **Q** Mr. Glover, again, I'm sorry.

15 **THE COURT:** Cross.

16 **MS. FULLWOOD:** I'm sorry. I thought he just --
17 I thought he was leading up to a question.

18 CROSS-EXAMINATION

19 BY MS. FULLWOOD:

20 **Q** So you've been with Ms. Wardlaw since '94?

21 **A** Yes, ma'am.

22 **Q** Okay. And the two of you have a lovely young
23 teenage daughter, correct?

24 **A** Yes, we do.

25 **Q** And the three of y'all, with some more of her

1 children, y'all all live together, right?

2 **A** Yes, we did.

3 **Q** All right. And you value that family, don't
4 you?

5 **A** Yes.

6 **Q** Okay. And y'all want to keep -- stick
7 together, right?

8 **A** Yes.

9 **Q** All right. Now, this stuff that you are
10 telling us that you told the police about, that
11 wasn't the first time you talked to the police, was
12 it?

13 **A** Meaning?

14 **Q** Well, you talked to the police at least two
15 times, correct?

16 **A** Yes, I did.

17 **Q** And give them two written statements, right?

18 **A** Yes, I did.

19 **Q** All right. And the first time you talked to
20 them, you didn't tell them anything other than you
21 gave him a ride and got him a hotel room, right?

22 **A** Yes, ma'am.

23 **Q** All right. So are you telling us that you lied
24 at that point in time?

25 **A** I wouldn't call it a lie. I just went into

1 protection mode. I was trying to protect because I
2 thought that was the thing to do. You have kids?

3 Q Okay. I'm going to ask the questions, all
4 right. That's kind of how this works.

5 Now, as a matter of fact, aren't you kin to
6 Mr. Hoefer and his family?

7 A My cousins are.

8 Q Your cousins?

9 A Yes. My first cousins are.

10 Q Your first cousins. So -- and you are, too?

11 A No, ma'am.

12 Q Okay. I thought -- didn't you tell one of
13 my --

14 A Well, I know them real, real good.

15 Q Okay. So you're close to them, too?

16 A But not as close as I am to him.

17 Q All right. Now, the first eight years of your
18 relationship with Ms. Wardlaw, you were in the
19 department of corrections, right?

20 A Yes, I was.

21 Q Okay. So you really weren't around Gonzales
22 then too much at all, right?

23 A Yes, ma'am.

24 Q You just couldn't be?

25 A Yes, ma'am.

1 **Q** And at the time that this occurred, were you
2 still on parole?

3 **A** No.

4 **Q** When did you get off of parole?

5 **A** I got off parole in March of 2002.

6 **Q** Okay. Okay. Wait a minute. Weren't you on
7 parole for ten years after that?

8 **A** No, ma'am.

9 **Q** No?

10 **A** I served nine years and two months. I did six
11 months intensive on supervised furlough.

12 **Q** And that was it?

13 **A** Yes, ma'am.

14 **Q** And you were done?

15 **A** Yes, ma'am.

16 **Q** All righty. So now Gonzales, or Snoop as you
17 call him, he wasn't a very good student, was he?

18 **A** No, ma'am.

19 **Q** Okay. And, I mean, he was the type of kid who
20 didn't turn in his assignments and got notes from
21 the teacher and all that kind of stuff, right?

22 **A** Yes, ma'am.

23 **Q** All right. And he never got -- he didn't
24 finish the ninth grade, did he?

25 **A** No, ma'am, he didn't.

1 **Q** All right. And about the time that he dropped
2 out, that was when he was about 17; does that sound
3 about right?

4 **A** Roughly, yes, ma'am.

5 **Q** All right. And that's about the point in time
6 that he moved out from y'all's home to stay with his
7 grandmama and wherever else, right?

8 **A** Yes, ma'am.

9 **Q** All right. And then he was arrested, what, on
10 his 19th birthday, 20th birthday?

11 **A** Nineteenth.

12 **Q** Nineteenth?

13 **A** Yes, ma'am.

14 **Q** So there was a period of time for a couple of
15 years that you and Ms. Wardlaw weren't with him on a
16 day-to-day basis, right?

17 **A** Yes, ma'am.

18 **Q** So he'd sometimes come by y'all's house and be
19 around y'all?

20 **A** Yes, ma'am.

21 **Q** But the majority of his time he spent away from
22 the house, didn't he?

23 **A** Yes, ma'am.

24 **MS. FULLWOOD:** All right. That's all the
25 questions I have, Your Honor.

1 **MR. HUBBARD:** No follow up.

2 **THE COURT:** Thank you very much, sir. You may
3 step down.

4 **MR. HUBBARD:** Your Honor, may we take a short
5 recess just to evaluate where we're going?

6 **THE COURT:** Sure.

7 Ladies and gentlemen, if you would step back in
8 the jury room. If you need anything, let the
9 bailiffs know. Please have no conversation about
10 the case.

11 (The jury retires to the jury room.)

12 **THE COURT:** We'll be at ease for a few minutes.

13 (Brief Recess.)

14 **THE COURT:** Let's bring the jury out, please.

15 Do you have any objection with me letting them
16 know that because of the weather, I'm going to let
17 -- we're going to call one more witness so they
18 won't sit there worrying?

19 **MR. HUBBARD:** Absolutely not.

20 (The jury returns to the courtroom.)

21 **THE COURT:** All right. Folks, just a little
22 FYI for you, I talked with the attorneys and
23 everything. I'm going to let the State put up one
24 more witness and then we're going to adjourn for the
25 afternoon, let y'all get out of here, and I'll give

1 you some additional instruction when we're done with
2 that witness, but that's what you can anticipate for
3 the balance of -- we're going to do one witness and
4 then we're going to put a stipulation on the record,
5 so that'll be it.

6 So you may call your next witness.

7 **MR. GRAHAM:** Thank you, Your Honor. The State
8 recalls John Van Houten.

9 **THE COURT:** All right. Mr. Van Houten, you are
10 still under oath, sir. If you'll please come
11 around.

12 JOHN VAN HOUTEN,
13 having been previously duly sworn, resumed the
14 witness stand and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 **Q** Investigator Van Houten, in addition to
18 extracting information from the Samsung phone that
19 was found at the Olive Garden, the victim's phone,
20 did you also do some other things on this case?

21 **A** Yes. At the request of investigator -- or I'm
22 sorry -- Sergeant Reese, he requested that I review
23 the call detail records of another phone involved in
24 the case.

25 **Q** Let me show you two different sets of records,

1 the first one being State's Number 32 that's in
2 evidence and ask if you recognize those?

3 **A** Yes. This is the subscriber information, tower
4 location, call detail records for -- registered to a
5 Sharon Wardlaw.

6 **Q** And the phone number -- and that group right
7 there actually is just the account information and
8 the call detail records for Sharon Wardlaw's phone
9 with Clear Talk. What telephone number is that?

10 **A** The telephone number is (803) 363-7542.

11 **Q** And let me also show you State's Number 33 and
12 ask if you recognize that as being the cell tower
13 locations?

14 **A** Yes. These are the -- whenever you request a
15 call detail record from a service provider, they
16 will normally provide you with the tower locations
17 that you're requesting, which includes the tower
18 number and the GPS location of each tower.

19 **Q** Looking back on State's Exhibit Number 32,
20 which was the subscriber information and the call
21 detail, which column or columns do you look at to
22 determine the cell tower that was used for a
23 particular call?

24 **A** For a particular call, in this case, this is
25 going to be under the S -- caller cell ID column.

1 **Q** So in particular -- well, let me show you three
2 exhibits and ask if you recognize these?

3 **A** Yes, I recognize those.

4 **Q** Did you, in fact, create those?

5 **A** I did.

6 **Q** And does that help explain the call detail
7 records and the location of the particular towers
8 that service those calls?

9 **A** That is correct.

10 **MR. GRAHAM:** Your Honor, the State would offer
11 these three exhibits into evidence at this time.

12 **MS. FULLWOOD:** No objection.

13 **THE COURT:** All right. Without objection.

14 (State's Exhibit Numbers 40 through 42,
15 blowups, marked and admitted into evidence.)

16 **MR. GRAHAM:** Your Honor, if I could ask
17 Investigator Van Houten to step down.

18 **THE COURT:** Yes, sir.

19 (Witness leaves the witness stand.)

20 BY MR. GRAHAM:

21 **Q** John, I'll ask you to stand over here and face
22 the court reporter and keep your voice up as we
23 talk. Looking at State's Exhibit Number 40, what is
24 this?

25 **A** This is a close-up shows tower location from

1 the tower number 21 -- or 2108 and the Olive Garden.
2 This is the tower where the tower's located. And
3 this is the Olive Garden.

4 **Q** So tower 2108 you determined was where?

5 **A** Less than -- within eyesight of the Olive
6 Garden.

7 **Q** Well, let's look at State's 41. Does that
8 actually show us where the Olive Garden is and the
9 tower itself?

10 **A** Yes. This is the Olive Garden and this is the
11 tower where the red line starts. And this is the
12 radius of the signal strength that I used to
13 triangulate -- not triangulate, I'm sorry --
14 pinpoint the call radius.

15 **Q** On both State's 40 and 41, there are some call
16 details; is that correct?

17 **A** That is correct.

18 **Q** What are you showing here?

19 **A** I'm showing all calls, incoming and outgoing,
20 solely hitting off tower 2108 on the date and the
21 time. The time says 5:40, for example, 5:40 p.m.
22 This is in Pacific time. You must add three hours
23 for eastern standard time.

24 **Q** So just to go through these then, the first
25 call, 12/29/2011, in eastern standard time, what

1 time would that be?

2 **A** That would be 8:43 -- I'm sorry -- 8:40 p.m.
3 and 23 seconds.

4 **Q** And what number is calling who?

5 **A** This is the number coming in. This is the
6 number that's receiving the call.

7 **Q** And these came -- these charts, 40 and 41, came
8 off of the records that you received from Clear Talk
9 Communication?

10 **A** That's correct.

11 **Q** And that is an incoming call and then the last
12 column is --

13 **A** 18, which is call duration, and it's rounded
14 into seconds.

15 **Q** This next column -- all these calls are hitting
16 off of tower 2108?

17 **A** That is correct.

18 **Q** Now, is that the closest tower to the Olive
19 Garden?

20 **A** That I'm not sure of. It -- I would say, yes,
21 because it's pretty much within eyesight of the
22 Olive Garden. You can actually see the tower.
23 Matter of fact, if you look closely enough, you can
24 see the shadow of the tower.

25 **Q** The next call that came in, that would have

1 been, I'm going to add three hours to it, that would
2 have been at 8:47:14 p.m.?

3 **A** That's correct.

4 **Q** What number is calling what number?

5 **A** The number that is going out is the (803)
6 363-7542 and it is calling (803) 404-4419. So it's
7 an outgoing call to that number.

8 **Q** And there are multiple calls that are listed on
9 here that detail all the calls that hit off tower
10 2108 near the Olive Garden; is that correct?

11 **A** That is correct.

12 **Q** The last call that shows up near the Olive
13 Garden, what time was that at?

14 **A** That is an outgoing call, that time is at 6:05.
15 You add three hours, it's 9:05 p.m.

16 **Q** So is it fair to say that -- were there any
17 other calls on any other towers between 8:40 and 23
18 and 9:05 and 18 seconds?

19 **A** Not according to the call detail records.

20 **Q** State's Number 42, what does this diagram or
21 photograph show?

22 **A** This is the tower and radius around the Red
23 Roof Inn at Interstate 26 and St. Andrews Road.

24 **Q** And what, as far as calls, what tower number
25 was that?

1 **A** This is tower 2035.

2 **Q** And approximately how far away is that tower
3 from the Red Roof Inn?

4 **A** It's approximately, I would have to
5 guesstimate, less than a quarter of a mile.

6 **Q** And what, if any, phone calls did you identify
7 hitting off of tower -- that's tower 2035, correct?

8 **A** That is correct.

9 **Q** What phone calls did you identify from the
10 records that hit off of tower 2035?

11 **A** Two phone calls -- actually, the first two
12 phone calls on the following day, 12/30/2011, calls
13 that were outgoing from (803) 363-7542. These are
14 outgoing calls hitting off these towers near the Red
15 Roof Inn to 979-8861.

16 **Q** And what time of a day were those calls made?

17 **A** According to the call detail records, they're
18 5:52 a.m. Again, you have to add three hours, so
19 it's 8:52.

20 **Q** 8:52 a.m. on the morning of December 30th,
21 2011?

22 **A** That's correct.

23 **Q** And all these records and information on
24 State's 40, 41 and 42, all came from the detailed
25 billing records and the tower locations from Clear

1 Talk Communication; is that correct?

2 **A** That is correct.

3 **Q** You can have a seat.

4 **A** (Witness resumes the witness stand.)

5 **MR. GRAHAM:** I believe that's all the questions
6 I have, Investigator. Please answer any questions
7 that Ms. Fullwood has.

8 CROSS-EXAMINATION

9 BY MS. FULLWOOD:

10 **Q** Investigator Van Houten, hi.

11 **A** Hi.

12 **Q** Basically, when you have a cell tower, you have
13 a roughly circular area of coverage, correct?

14 **A** That is correct.

15 **Q** And that can vary depending on the strength of
16 the cell tower?

17 **A** Right. In this case, I was very conservative
18 and I only used three quarters of a mile.

19 **Q** Okay. And some towers, actually, their
20 coverage overlaps that with another, correct?

21 **A** That is correct.

22 **Q** All right. And when somebody places a cell
23 phone call, it depends on a variety of factors like
24 the volume of a cell phone, calling going on,
25 possibly the weather and maybe other things that

1 determines which tower ends up initially picking up
2 the call; is that right?

3 **A** If there is an abundant amount of calls coming
4 in and going out, it could affect -- the tower can
5 be switched -- or I'm sorry -- the call can be
6 switched to a closer tower as long as the phone is
7 receiving a good signal from that tower.

8 **Q** Right. So it doesn't necessarily mean that the
9 phone was within the radius of the tower even though
10 the power -- tower picks it up as the calling tower,
11 right?

12 **A** According to the call detail records, this
13 phone was well within the radius of the tower
14 signal.

15 **Q** All right. But there are other towers nearby,
16 correct?

17 **A** There are other towers, but at this date and
18 this time, according to the call detail records,
19 they show that that phone was hitting that tower.

20 **Q** Right. But I thought you just told us that
21 depending on volume of calling, overall volume, a
22 phone might not necessarily be picked up by the
23 tower it's closest to?

24 **A** It's possible, but in this case, it's not. The
25 call detail records, when you make a call -- the

1 reason they keep the call detail records, for
2 billing purposes only. So it logs the tower, the
3 date and time, the MZ number, the MSID number, all
4 that is taken into consideration. The call detail
5 records provided by the carrier, Clear Talk,
6 specifically says that that tower was the tower that
7 was hit. These phone calls within that timeframe
8 were all hitting off that one tower.

9 **Q** Okay. Now, when you say you were using the
10 Clear Call {sic} records, you were using the Clear
11 Call records of that particular phone, right?

12 **A** That is correct.

13 **Q** So you don't have any idea about what kind of
14 volume -- you weren't using a record of all the
15 calls that were placed during these relevant periods
16 of time, were you?

17 **A** No. It's my understanding the search warrant
18 only covered for this phone number.

19 **MS. FULLWOOD:** Okay. No further questions.

20 Thank you.

21 **THE COURT:** Anything further?

22 **MR. GRAHAM:** Nothing else, Your Honor.

23 **THE COURT:** Thank you very much, sir. You may
24 step down.

25 Now, do you have a stipulation that we need to

1 put on the record?

2 **MR. GRAHAM:** I do, Your Honor. Ms. Fullwood
3 has agreed to this, so we'll go ahead and introduce
4 it into evidence and I'll publish it, Your Honor.

5 (State's Exhibit Number 43, stipulation,
6 marked and admitted into evidence.)

7 **THE COURT:** And as I told you earlier, a
8 stipulation is simply an agreement. So the parties
9 have agreed to what you're about to hear. Without
10 the necessity of putting up witnesses and taking up
11 court time, they have agreed to what you're about to
12 hear. So this is in evidence and you'll hear it
13 now.

14 **MR. GRAHAM:** Thank you, Your Honor. This is
15 State's Exhibit 43:

16 Approximately midnight on 12/29/2011, Sharon
17 Wardlaw and Lindsey Glover were asleep at their home
18 and had been home all night when they received a
19 phone call from cell number 363-7542 belonging to
20 their son, Gonzales Wardlaw. That both Sharon
21 Wardlaw and Lindsey Glover spoke to Gonzales Wardlaw
22 on the phone at that time. That Lindsey Glover left
23 for a short time and returned in the early morning
24 hours of 12/30/2011.

25 **THE COURT:** All right. Thank you, sir.

1 All right. Now, ladies and gentlemen, we're
2 going to break at this time and let you head home.
3 We have already gotten word from Court
4 Administration that they're closing all the courts
5 in South Carolina tomorrow. So we will not be
6 convening tomorrow. I can't speak to Thursday
7 because I'm not God and only God can tell us what
8 that weather is going to do.

9 But what I will ask you to do is, and if you
10 don't have it, if someone still has their pad, write
11 this number down, and then if you don't have a pad
12 with you, somebody can make you this number and tear
13 it off, 785-2296, 785-2296. That's the number
14 that's on that little pink card you got, so if you
15 still have that pink card, it's on there. That's
16 the call-in number. You don't need to go to the web
17 site because this information won't be on the web
18 site. So use that call-in number.

19 I'm going to ask you, if you would, to call
20 that number between nine and ten o'clock Thursday
21 morning. We'll -- we will be on a delayed start, if
22 we start at all, but there'll be information on that
23 number or on that recording for you to follow, okay.

24 So we don't have any court tomorrow. Call that
25 number I gave you between nine and ten o'clock on

1 Thursday morning and follow the instructions that
2 you'll get. And, of course, when you leave here
3 now, always follow the instructions that I've given
4 you about not discussing the case with anyone. Tell
5 your family that you got tomorrow off and to remain
6 patient, you'll be able to tell them what they want
7 to know when it's over, but right now they just need
8 to be patient and you are not allowed to talk about
9 the case in any way.

10 Now, when you leave here, you'll go to the jury
11 room first. If you've got a pad and you've been
12 taking notes, that must remain in the jury room,
13 okay. You can't take that with you. But I would --
14 if you haven't already done it, write your name on
15 your pad so everyone knows whose pads is whose,
16 okay. And then we'll -- hopefully, we'll see you
17 back here Thursday, but whatever that recording
18 tells you is what you'll need to follow, okay.

19 So everyone else remain seated.

20 And, ladies and gentlemen, I'm going to get you
21 to go through the jury room, get your belongings,
22 leave the note pads in there and then you're free to
23 go.

24 (The jury was excused for the day.)

25 **THE COURT:** All right. Is there anything else

1 we need to take up before we adjourn?

2 **MR. GRAHAM:** No, Your Honor.

3 **THE COURT:** I would leave you with the same
4 instruction. I don't know what Thursday is going to
5 bring, but we'll all just have to wait and see.

6 In the meantime, Ms. Fullwood, if -- even
7 though, I don't know, but there's some indication
8 the State may rest, they may have something else, I
9 don't know. But I do know that whenever we
10 reconvene, at some point, we're going to be to the
11 point that we'll need to address the defense as to
12 whether or not you intend to put up a case. So if
13 you would, you and Mr. Wardlaw can discuss that
14 during this break time, okay.

15 **MS. FULLWOOD:** Yes, sir, we will.

16 **THE COURT:** All right. If there's nothing
17 else, ladies and gentlemen, everybody be safe
18 heading home and we'll see you hopefully Thursday.

19 **MR. HUBBARD:** Thank you, Your Honor.

20 (The proceedings were concluded for February
21 11, 2014.)

22 (The following proceedings were held on
23 February 14, 2014.)

24 **THE COURT:** Solicitor, my understanding is
25 that, we had briefly discussed this on Tuesday, but

1 that the State had indicated that you were going to
2 rest. Has that changed?

3 **MR. HUBBARD:** No, sir, Your Honor. We're going
4 to rest.

5 **THE COURT:** All right. Then, Ms. Fullwood,
6 you've discussed with Mr. Wardlaw the intentions of
7 the defense and what you intend to put up?

8 **MS. FULLWOOD:** Yes, sir, I have.

9 **THE COURT:** Okay. And let me -- is Mr. Wardlaw
10 going to put up any testimony?

11 **DEFENDANT:** Yes, sir, Your Honor.

12 **THE COURT:** All right. Now -- is it
13 Mr. Wardlaw or another witness?

14 **MS. FULLWOOD:** It will be Mr. Wardlaw.

15 **THE COURT:** Were there any other witnesses?

16 **MS. FULLWOOD:** No, Your Honor.

17 **THE COURT:** All right. Have you discussed with
18 the State, I don't know if there's any prior history
19 that Mr. Wardlaw has to be concerned about or any
20 impeachment type situation?

21 **MS. FULLWOOD:** There is.

22 **MR. GRAHAM:** He has three convictions, Your
23 Honor. He has a burglary second conviction from
24 September 8th of 2010. On that same date, he has a
25 grand larceny conviction.

1 **THE COURT:** Yes, sir.

2 **MR. GRAHAM:** And then as a juvenile, on
3 November 13th, 2007, he had a conviction for
4 receiving stolen goods less than a thousand dollars.

5 **THE COURT:** Anything else?

6 **MR. GRAHAM:** No, that's it, Your Honor.

7 **THE COURT:** Ms. Fullwood, do you concur that
8 that's Mr. Wardlaw's prior history?

9 **MS. FULLWOOD:** I wasn't aware of the juvenile
10 record. I was aware of the adult record.

11 **THE COURT:** You've got that, though?

12 **MR. GRAHAM:** I'm sorry, Your Honor?

13 **THE COURT:** You got the information on that to
14 show her?

15 **MR. GRAHAM:** For the juvenile record, yes, Your
16 Honor. I thought we had given her a copy of it.

17 (Pause.)

18 **THE COURT:** Does all that appear in order, Ms.
19 Fullwood?

20 **MS. FULLWOOD:** It does appear to be in order,
21 Your Honor. I would just say this is a -- appears
22 to be a misdemeanor level of receiving stolen goods,
23 so I ask that they not be able to use that.

24 **MR. GRAHAM:** Your Honor, I don't think -- for a
25 crime involving dishonesty, I don't think it matters

1 whether it's a felony or a misdemeanor, so I think
2 it's appropriate.

3 **MS. FULLWOOD:** And my position would be it's
4 not a crime involving necessarily dishonesty.

5 **THE COURT:** All right. I'm going to allow it.
6 I think it does involve -- I mean, because to be
7 convicted of receiving stolen goods, you have to
8 either know or should have known that the goods were
9 stolen. And if you did, I mean that seems to me to
10 be -- I mean, that's -- it's essentially stealing,
11 which I think has been shown to be a crime of
12 dishonesty. So I think it falls under that purview.
13 So I'm going to allow that.

14 Mr. Wardlaw, I know you've talked with your
15 lawyer about your right to testify. I'm going to go
16 over that with you, all right, sir?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Every person that's charged with a
19 criminal offense has constitutional rights. A
20 couple of those rights are the right to testify in
21 your defense, also the right to remain silent, and
22 the right to not testify. Ms. Fullwood has
23 indicated that after having conversations with you,
24 that it is your intention to testify; is that
25 correct?

1 **DEFENDANT:** Yes, sir, Your Honor.

2 **THE COURT:** Okay. Let me address first your
3 right to not testify and then I'll address your
4 right to testify, okay.

5 In every criminal case, as I indicated, a
6 person has a right to remain silent. And if you --
7 if your decision was to remain silent or to not
8 testify, then when I give the jury the instruction
9 on the law, I would tell the members of the jury
10 that you have a constitutional right to remain
11 silent, and that the burden of proof in this case
12 rests upon the State, and that if a person exercises
13 their right to remain silent, that constitutional
14 right, then the jury cannot in any way consider that
15 in their deliberations regarding guilt or innocence.
16 In other words, the jury cannot hold that against
17 you.

18 I would go further to tell the members of the
19 jury that not only is it improper for them to
20 consider the fact that you chose to remain silent, I
21 would explain to them that that is not even a topic
22 or an issue that they can even talk about in the
23 jury room because it's not an issue at all. They
24 cannot in any way consider that in their
25 deliberations. You understand that?

1 **DEFENDANT:** Yes, sir, Your Honor.

2 **THE COURT:** Okay. Now, in this case, you have
3 indicated to me that you do intend to testify and
4 you certainly do have that right as well. You heard
5 me talk with the attorneys regarding your prior
6 criminal history. You understand that if you take
7 the stand, that you would be required, obviously, to
8 answer questions posed by your attorney, but you
9 would also have to answer questions posed by the
10 State's lawyers. Do you understand that?

11 **DEFENDANT:** Yes, sir, Your Honor.

12 **THE COURT:** Now, these three prior convictions
13 when I -- in talking with them, when I said that
14 they were proper for cross-examination or
15 impeachment, in other words, what I mean by that is
16 the State or your lawyer, either one, they can ask
17 you about those, but they can't go into details
18 about those and they can't go into anything
19 regarding any sentencing on those. What they simply
20 can do is ask if it is correct that you, in fact,
21 have been convicted of these offenses and that's all
22 they can do. They can't go any further or dig any
23 deeper into that. You understand, sir?

24 **DEFENDANT:** Yes, sir, Your Honor.

25 **THE COURT:** Okay. Now, understanding that you

1 would have to respond to questions both from your
2 attorney and from the State's attorney, do you still
3 wish to go forward and exercise your right to
4 testify?

5 **DEFENDANT:** Yes, sir, Your Honor.

6 **THE COURT:** All right, sir.

7 All right. Is there anything further that I
8 need to go over?

9 **MR. GRAHAM:** No, Your Honor.

10 **THE COURT:** Anything further?

11 **MS. FULLWOOD:** No, sir, Your Honor.

12 **THE COURT:** All right. Well, Mr. Wardlaw, I
13 certainly respect your right to testify and will
14 certainly make that right available to you.

15 Now, because the State is going to -- and the
16 jury is out, we are waiting for one of our jurors
17 who got delayed because of the weather, but
18 indicated he is on the way. Is that correct?

19 **THE CLERK:** Yes, sir. He said he should be
20 here no later than 12:00.

21 **THE COURT:** Okay. So he's on the way and he'll
22 be here in a little bit.

23 What I thought we would do just to maximize our
24 time and efficiency is when the jury comes out,
25 Mr. Hubbard, I'll let the State rest on the record.

1 And then obviously we would normally send the jury
2 out and take up any motions at the close of the
3 State's case. Why don't we go ahead, while the jury
4 is out, and let's take up those motions at this
5 time. And then when the jury comes -- when we
6 actually bring the jury out and start, we'll let the
7 State rest and I'll let them know that we've taken
8 up those motions and then we can move into the
9 defense's case.

10 So, at this time, I'll take up any motions at
11 the close of the State's case. Ms. Fullwood.

12 **MS. FULLWOOD:** Your Honor, at this time, we'd
13 move for a directed verdict on the grounds that
14 there's a failure of competent evidence that tends
15 to prove the offense charged. Specifically, Your
16 Honor, we think the evidence does not tend to prove
17 the element of malice.

18 **THE COURT:** Does the State wish to respond?

19 **MR. HUBBARD:** Your Honor, we believe there's an
20 abundance of malice, everything from an individual
21 who saw the defendant or identified somebody looking
22 like the defendant in the parking lot giving him a
23 glare, waiting for him to get out of sight before he
24 pulled the trigger. There's a confession to his
25 stepfather about why it happened, Ain't nobody going

1 to take nothing from me. There are the rap lyrics
2 which identify who he is and why he did it, which
3 is, Nobody's going to take anything from me; I'll
4 kill them if they do. Judge, there's just an
5 abundance of malice in this case.

6 **THE COURT:** All right. I'm going to
7 respectfully deny the motion for a directed verdict
8 on that ground. Ms. Fullwood, I just think it's a
9 factual question for the jury to decide and so I
10 respectfully deny that.

11 All right. Anything further?

12 **MS. FULLWOOD:** No, Your Honor.

13 **THE COURT:** We're kind of in an awkward
14 situation. We kind of hurried it up to get here and
15 get started and now we have basically hurried up to
16 wait. Our other juror is going to be here,
17 hopefully, shortly. So I think we'll just remain at
18 ease.

19 I would talk to you further about the charge in
20 chambers, but I don't think we really can do that
21 until we've heard all of the evidence so that we can
22 then, you know, appropriately discuss the charge.
23 So we'll just -- we'll just be at ease then. And if
24 you need to go back to your offices for anything,
25 that's fine. Just be close by so that we can get

1 you back when the jury arrives, okay. We'll just
2 remain at ease while we wait for our remaining
3 juror.

4 (Brief Recess.)

5 **THE COURT:** All right. We're back on the
6 record. As I said, we're missing one juror, but we
7 do have the two alternates. Does the State have any
8 objection to seating one of our alternates and
9 proceeding with the trial?

10 **MR. HUBBARD:** No, sir, Your Honor. No
11 objection.

12 **THE COURT:** Does the defense have any objection
13 to that?

14 **MS. FULLWOOD:** No, Your Honor.

15 **THE COURT:** All right. My understanding of the
16 rules is that when you have more than one alternate,
17 then you put those numbers, one and two, in a hat or
18 whatever and pull out the -- you got a cup?

19 **THE CLERK:** Yes, sir.

20 **THE COURT:** Jiggle them around and pull a
21 number.

22 All right. Alternate number one, Mandy --
23 juror number 76, Mandy Garron, will be substituted
24 in.

25 Is the State ready to proceed?

1 **MR. GRAHAM:** Yes, Your Honor.

2 **THE COURT:** Defense ready?

3 **MS. FULLWOOD:** Yes, Your Honor.

4 **THE COURT:** Let's bring the jury in, please.

5 (The jury enters the courtroom at 12:04

6 p.m.)

7 **THE COURT:** Welcome back, folks. A couple of
8 things I want to deal with before we get started.
9 The first is, Ms. Bradley, Ms. Bradley, would you be
10 so kind as to serve as the foreperson of our jury?

11 **FORELADY:** Sure.

12 **THE COURT:** All right. I'll explain to
13 everybody exactly what that entails. Ladies and
14 gentlemen, anytime you have a group of folks, you
15 know, in a jury like this, it's just easier for the
16 Court to deal with one person on behalf of the jury
17 than it is to deal with every individual person, and
18 so the foreperson is basically the spokesperson for
19 the jury. It's the person who, if you have a
20 question about anything, that then the foreperson
21 would write down that question, pass it out to the
22 Court. And depending on what that question is, I
23 may just respond by writing back my answer or I may
24 ask the foreperson to step out and respond or I may
25 bring you out as a panel as a whole. It just

1 depends on what that question may be. But,
2 essentially, that's what the foreperson does. They
3 are the, basically, the liaison between the jury
4 panel and the Court.

5 The other thing that the foreperson does is
6 when you begin your deliberations, I will tell you
7 that everyone has to be present for those
8 deliberations. So that if any -- while you're
9 conducting your deliberations, if anyone needs to
10 excuse themselves to use the restroom or something
11 of that nature, then the foreperson would then ask
12 that the deliberations cease or stop while that
13 person's gone. Then upon their return, start back,
14 okay.

15 I will tell you this: That the foreperson's
16 opinion, vote, thoughts are no more important or
17 carry no more weight than anyone else on the jury.
18 You're all equal members of the jury because your
19 verdict in this case must be unanimous, everyone
20 must agree on the verdict. So, therefore, the
21 foreperson's opinion carries no more weight than
22 anyone else.

23 I tell juries all the time, when you begin your
24 deliberations, you need to enter into those
25 deliberations with an open mind and listen to each

1 other with open minds and examine everyone's
2 opinions. So the foreperson, again, is just another
3 member of this body, all equal members, okay.

4 But now we're going to have to do a little bit
5 of juggling here. I'm going to get y'all to swap
6 seats, and if you would, Ms. Bradley, occupy that
7 chair.

8 Now, the other matter, the other thing is,
9 Ms. Garron, you've moved from the alternate seat
10 into the main panel. We've had a juror, Mr. Murray,
11 who, I don't know, weather related or what the
12 situation is or power related because of the
13 weather, but for whatever reason, Mr. Murray was not
14 able to return. And so you've been moved into
15 that -- into the main panel, so -- and so that
16 leaves us with Mr. Poole as our alternate.

17 Ladies and gentlemen, when we adjourned court
18 on Tuesday, we were on the State's case. And I'm
19 going to recognize the State now for your next
20 witness.

21 **MR. HUBBARD:** Thank you, Your Honor. Your
22 Honor, at this time, the State rests.

23 **THE COURT:** All right. Ladies and gentlemen,
24 while we were waiting for our other juror to arrive,
25 Mr. Hubbard was kind enough to inform the Court that

1 the State was going to rest their case. And the
2 reason he was letting me know that is what typically
3 occurs in a trial is at the close of the State's
4 case, I would send you, the jury, back into the jury
5 room while I take up matters of law that I have to
6 take up at the close of the State's case, but we
7 have done that. We went ahead and did that.

8 Ms. Fullwood was kind enough to agree to go
9 ahead and take up those issues and those matters
10 while we were waiting for that other juror. So we
11 have done that. And so rather than send you back
12 out and then have to bring you right back in, we are
13 now ready to proceed with the defense's case.

14 So I would recognize Ms. Fullwood on behalf of
15 the defense.

16 **MS. FULLWOOD:** Thank you, Your Honor. Your
17 Honor, the defense calls Gonzales Wardlaw.

18 **THE COURT:** All right. Mr. Wardlaw, if you
19 would, please come around, sir.

20 GONZALES WARDLAW,
21 having been duly sworn, testified as follows:

22 **THE CLERK:** Once you're seated, speak up loud
23 and clear. State your full name, spelling your
24 last, please.

25 **THE WITNESS:** My name is Gonzales Wardlaw.

1 Wardlaw, W-a-r-d-l-a-w.

2 DIRECT EXAMINATION

3 BY MS. FULLWOOD:

4 Q Gonzales, how old are you?

5 A Twenty-two years old.

6 Q Okay. What's your date of birth?

7 A [REDACTED].

8 Q Okay. Now, is there some other name that
9 you're known by?

10 A Yes, ma'am.

11 Q What's that?

12 A Snoop.

13 Q How did you get that name?

14 A I got that name from my grandmother because I
15 used to like to watch Peanuts all the time when I
16 was younger. And, you know, as I got older, my
17 cousins just started calling me Snoop.

18 Q Is that what your family members call you?

19 A That's what my family has been calling me since
20 I was two.

21 Q Okay. Is that what your friends call you, too?

22 A Yes, ma'am, it is.

23 Q All right. And where did you grow up?

24 A I grew up in Columbia, South Carolina, off
25 Monticello Road.

1 **Q** Okay. And how far did you go in school?

2 **A** To the ninth grade.

3 **Q** Did you finish the ninth grade?

4 **A** No, ma'am, I didn't finish the ninth grade.

5 **Q** And do you have any children?

6 **A** Yes, ma'am, I have one children {sic}.

7 **Q** How old?

8 **A** Her name is **S.** . She's four years old.

9 **Q** Now, you've been in trouble with the law
10 before, right?

11 **A** Yes, ma'am, that's correct.

12 **Q** And you've been convicted of burglary in the
13 second degree; is that right?

14 **A** Yes, ma'am.

15 **Q** And you've been convicted before of grand
16 larceny; is that correct?

17 **A** Yes, ma'am, that's correct.

18 **Q** And when you were a juvenile, you were
19 convicted of receiving stolen goods; is that right?

20 **A** Yes, ma'am.

21 **Q** All right. Did you know Thomas Hoefer?

22 **A** Yes, ma'am, I did know him.

23 **Q** And how did you know him?

24 **A** I knew him because we went to school together
25 and, you know, I've seen him in the neighborhood and

1 I bought weed from him a couple times.

2 Q About how many times do you think you bought
3 weed from him?

4 A Probably like five to ten times.

5 Q Okay. And you say you went to school together.
6 How long do you think you knew him? About what age?

7 A For about a year, a year or two in middle
8 school.

9 Q Okay. So you've known him since you were sort
10 of a young teenager?

11 A Yes, ma'am.

12 Q Did you consider him a friend?

13 A Yes, ma'am, I did.

14 Q You got along with him okay?

15 A Yes, ma'am.

16 Q Now, you were there the night Thomas was shot,
17 right?

18 A Yes, ma'am, I was.

19 Q How did you happen to meet up with him that
20 day?

21 A Well, I was in the Colonies Apartment and I got
22 a call from a friend named Keshia.

23 Q Do you know Keshia's last name?

24 A No, ma'am, I don't.

25 Q Okay. And what did Keshia want with you?

1 **A** She wanted to buy some weed from me and she
2 wanted me to ride with her to Wal-Mart.

3 **Q** Okay. And so as a result of all that, what did
4 you do?

5 **A** So I rode to Wal-Mart with her. But then I
6 told her I wanted to go buy some more weed because I
7 wanted to get some, me personally, for myself.

8 **Q** Okay. And how did you get to that Wal-Mart?

9 **A** Keshia drove me.

10 **Q** You went to Wal-Mart, right?

11 **A** Yes, ma'am.

12 **Q** And what happened then?

13 **A** Well, I had called Thomas. I called Thomas
14 because me and him was supposed to meet up so I
15 could buy some more weed with him -- buy some more
16 weed from him. And we had agreed that I was going
17 to buy two and a half ounces. So --

18 **Q** So was -- was the stuff in the two and a half
19 ounces going to all be the same?

20 **A** No, ma'am. It was going to be two ounces of
21 mid and a half of kush, which is like a more potent.

22 **Q** Okay. Does more potent mean more expensive?

23 **A** Yes, ma'am.

24 **Q** All right. Now, was Thomas' dealings in
25 marijuana the same as you or different?

1 **A** No, ma'am, it was --

2 **MR. GRAHAM:** Objection, Your Honor, relevance.

3 **MS. FULLWOOD:** This is -- lays the
4 circumstances behind what happened that day.

5 **THE COURT:** I'll allow it; overruled.

6 BY MS. FULLWOOD:

7 **Q** How was it different?

8 **A** It was different, like, he was more farther
9 down the chain, like, selling ounces and half ounces
10 rather than grams.

11 **Q** Okay. And he was one of your suppliers?

12 **A** Yes, ma'am.

13 **Q** So how did you come to meet up with him over at
14 the Olive Garden?

15 **A** Because I called him when I was at the Wal-Mart
16 and we agreed to meet at the Waffle -- I mean, at
17 the Olive Garden so I can buy weed from him.

18 **Q** All right. And this was the Harbison Wal-Mart?

19 **A** Yes, ma'am, it's the Harbison.

20 **Q** Okay. And did you go from the Wal-Mart
21 directly over to that Olive Garden area?

22 **A** Yes, ma'am. We went straight from Wal-Mart to
23 the Olive Garden.

24 **Q** Did Keshia drive you there?

25 **A** Keshia drove me there.

1 **Q** And about what time of the day do you think
2 this was?

3 **A** It had to be about 8:30 or a little after 8:30.

4 **Q** Okay. And did Keshia park at the Olive Garden?

5 **A** No, ma'am. She parked across the street like
6 toward the Baby R Us store.

7 **Q** Why did she park there?

8 **A** Because, you know, just in case the police was
9 there, I've had weed on me, I was going to buy weed,
10 you know, I didn't want anyone to get in trouble
11 just in case we get stopped because I had drugs in
12 the car.

13 **Q** Now, were you carrying a weapon that night?

14 **A** No, ma'am, I wasn't.

15 **Q** What happened once you saw Thomas at the
16 Wal-Mart -- I mean, at the Olive Garden?

17 **A** I saw Thomas at the Olive Garden.

18 **Q** What happened then?

19 **A** He gave me weed, but when he gave me weed, it
20 wasn't two and a half ounces. It was an ounce and a
21 half. So I --

22 **Q** How was this weed packaged?

23 **A** It was packaged in two sandwich bags.

24 **Q** Okay. Two sandwich bags?

25 **A** Yes, ma'am.

1 **Q** So what was different than what you had agreed
2 on?

3 **A** Well, when I got the weed, I immediately looked
4 at it, and I opened the first bag and I smelled it
5 because kush got a certain smell to it and it wasn't
6 kush. So when I opened the second bag, because I'm
7 already feeling the -- just feeling the weight of
8 it, I knew it wasn't two ounces.

9 **Q** Okay.

10 **A** So I told him I didn't want it.

11 **Q** What happened next?

12 **A** As soon as I told him I didn't want it, I tried
13 to carry it back to him and he said, No, these your
14 drugs now. I just want my money.

15 So I told him, No, I don't want it because I'm
16 not going to make the money I'm supposed to make off
17 it. I don't want it. Like, this is not what it
18 supposed to be.

19 So he pulled out a gun on me and said, Nigger,
20 I'll kill your ass. So --

21 **Q** So what did you think was about to happen?

22 **A** I immediately felt for my life. I thought I
23 was about to die at the time. I just knew he was
24 about to shoot me and kill me. Like, there was no
25 doubt in my mind if I would have did anything other

1 than acting how I acted, he was going to shoot me.

2 **Q** Well, why didn't you just run away from him?

3 **A** If I would have ran, you know, he's bigger than
4 me, taller than me, he could have easily just shot
5 me in the back of my head or shot me in my back. I
6 had no other way to act.

7 **Q** So what action did you take then?

8 **A** I was in fear for my life. So, you know, I
9 just dropped the weed and I reached for the gun to
10 try to wrestle it away from him. I tried to turn it
11 away from me.

12 **Q** Well, what part of the gun did you grab?

13 **A** The top part in the back.

14 **Q** Okay. Did your hand go around his hand?

15 **A** No, ma'am.

16 **Q** Okay.

17 **A** Just grabbing for the gun.

18 **Q** You grabbed the top and the back?

19 **A** Yes, ma'am.

20 **Q** And did he resist you grabbing the gun?

21 **A** Yes, ma'am. We was wrestling over the gun. We
22 was tussling over the weapon. And, you know,
23 everything just happened so fast. The gun just went
24 off.

25 **Q** Okay. Do you know how the gun went off?

1 **A** I don't know how it went off. I know we was
2 wrestling over the gun. I heard the gun go off and
3 he just ran.

4 **Q** Okay. How long do you think you wrestled over
5 the gun, time-wise?

6 **A** Maybe a couple seconds.

7 **Q** All right. And so you say he ran off once the
8 gun discharged?

9 **A** Yes, ma'am.

10 **Q** So what did you do next?

11 **A** Well, after that, I grabbed the weed off the
12 ground. I put the gun in my pocket and I grabbed
13 the box of bullets that fell out of his pocket.

14 **Q** Well, let's back up then. When did some
15 bullets fall out of his pocket?

16 **A** When he pulled out the gun from his pocket.

17 **Q** Some bullets had fallen down, too?

18 **A** Yes, ma'am.

19 **Q** Well, why did you grab up the gun and the
20 marijuana and the bullets?

21 **A** You know, I was scared. I never been into
22 nothing like that before in my life. I just was
23 acting off instinct, and I was just, just picked the
24 stuff up and go and get out of there.

25 **Q** What did you think was about to happen?

1 **A** I didn't know he was shot at the time. I
2 didn't know if he was going to go get another gun or
3 going to go find some other kind of weapon to come
4 back for me. So, you know, I just picked the stuff
5 up that was there and ran.

6 **Q** All right. And where did you run to?

7 **A** I ran back to Keshia's car.

8 **Q** Okay. Did you tell her what had happened?

9 **A** No, ma'am, I didn't.

10 **Q** All right. Now, after this, did you stay with
11 Keshia?

12 **A** Yes, ma'am. I was with Keshia for a while that
13 night.

14 **Q** And what happened with that gun?

15 **A** Well, I end up throwing the gun in the river.

16 **Q** Tell us how that came to be.

17 **A** Me and Keshia, we was supposed to be riding to
18 Gilbert. We was riding to Gilbert so I can go pick
19 up a friend, but on the way there, I just told her
20 to stop the car right there on River Drive, and I
21 got out the car and threw the gun away.

22 **Q** So you were on River Drive?

23 **A** Yes, ma'am.

24 **Q** And you say you stopped?

25 **A** We stopped the car. I got out the car and I

1 just threw the gun away. I threw it in the river.

2 **Q** And which river did you throw it in?

3 **A** Broad River.

4 **Q** And did Keshia know that that's what you were
5 doing?

6 **A** No, ma'am, she didn't. She just knew I told
7 her to stop the car and I just got out for a second.

8 **Q** All right. And by this time -- well, you say
9 you went over to Gilbert?

10 **A** Yes, ma'am, we went to Gilbert.

11 **Q** You say you had a friend there?

12 **A** Yes, ma'am.

13 **Q** And who was that friend?

14 **A** Sharonda Abney.

15 **Q** Okay. Now, on the way out to Gilbert, was it
16 just you and Keshia in the vehicle?

17 **A** No. Keshia had somebody else in the car with
18 her, and she had this other dude -- she had two
19 other guys in the car with her.

20 **Q** Were they in the car with her when y'all went
21 to the Olive Garden?

22 **A** Yes, ma'am.

23 **Q** All right. So did you talk to either of these
24 people about what had happened?

25 **A** No, ma'am. I didn't talk to nobody about it.

1 **Q** All right. Now, this friend of yours in
2 Gilbert, did you have plans with this friend?

3 **A** Yes, ma'am, we had plans. Me and her had plans
4 to get a hotel room that night.

5 **Q** All right. And where did y'all go to get a
6 motel room?

7 **A** Well, we had first went to the Embassy Suite
8 {sic}, but I didn't have my ID or she didn't have
9 her ID.

10 **Q** So, like, how did you get over there from
11 Gilbert?

12 **A** Keshia dropped us off.

13 **Q** Okay. And where did she drop you off at?

14 **A** She dropped us off at the Exxon on Greystone.

15 **Q** All right. So you first went to Embassy Suites
16 and you couldn't get one?

17 **A** Yes, ma'am.

18 **Q** What did you do after that?

19 **A** Well, I went through my phone. I was going
20 through my call log because I was trying to find
21 someone that'll get the room for me. I tried to
22 call Lindsey. I couldn't get in touch with him at
23 first. So I called my mama phone. I called my
24 mama, asked my mama to let me speak to Lindsey.

25 **Q** And did you talk to him?

1 **A** Yes, ma'am.

2 **Q** And as a result of talking to him, what
3 happened?

4 **A** I told Lindsey I had a girl with me and I was
5 trying to get a room. I need him to come get the
6 room for me because I don't have my ID.

7 **Q** Did he do that for you?

8 **A** Yes, ma'am.

9 **Q** All right. When he did that, did you tell him
10 about what had happened at the Olive Garden?

11 **A** Yes, ma'am.

12 **Q** All right. And what did you tell him?

13 **A** I told Lindsey the same story I told you today.

14 **Q** Okay. And you realize he's testified to
15 something different, correct?

16 **A** Yes, ma'am, it was partially different. Like,
17 Lindsey was half sleep when I woke him up, so, you
18 know, he didn't quite hear everything I was saying
19 exactly, you know. I don't think he deliberately
20 meant to say -- he said what he thought he -- what
21 he thought he had heard.

22 **Q** Okay.

23 **A** You know, I'm not calling him a liar. That's
24 my stepdad. I know he love me.

25 **Q** After staying in the hotel and everything, what

1 did you do between the dates of December 30th and
2 January 19th? Where were you?

3 **A** Well, the next day I went back to my grandma
4 house at Crane Forest. Then the day after that, I
5 went back to the Colonies on Beltline.

6 **Q** And who's at the Colonies?

7 **A** My friend, Ce Kia Bolton.

8 **Q** And that's the woman who testified on Tuesday?

9 **A** Yes, ma'am, it is.

10 **Q** And you stayed there until you were arrested?

11 **A** Yes, ma'am.

12 **Q** All right.

13 **MS. FULLWOOD:** Beg the Court's indulgence.

14 (Pause.)

15 **Q** Let me show you State's Exhibit 36 and see if
16 you recognize it.

17 **A** Yes, ma'am, I recognize it.

18 **Q** What is it?

19 **A** Those are rap lyrics.

20 **Q** Did you write that?

21 **A** You know, Ms. Fullwood, I'm not going to deny
22 writing those. I did write that.

23 **Q** You did write that. What in the world were you
24 thinking when you wrote that?

25 **A** You know, Ms. Fullwood, for years, I've been

1 writing music and I was using it as a way to process
2 everything that happened. I feel bad about it. I'm
3 ashamed of it. I'm hurt. You know, someone,
4 someone lost their life. I should have found a
5 better way to express myself.

6 **Q** All right.

7 **A** You know, and I apologize if anyone feel hurt
8 or bad about those. There was never an intent for
9 anybody to read or hear anything. I was just
10 processing everything, again, because things
11 happened so fast. I was scared.

12 **Q** You remember the day you were arrested, right?

13 **A** Yes, ma'am, I remember.

14 **Q** And after you were arrested, you went down and
15 talked to the police in Columbia, right?

16 **A** Yes, ma'am.

17 **Q** And did you tell them the same thing you told
18 us here today?

19 **A** No, ma'am, I didn't.

20 **Q** Did you deny you had any involvement with this?

21 **A** Yes, ma'am. I was scared. You know, like I
22 said, I never been through a situation like this
23 before. So, you know, I didn't know if they was
24 trying to railroad me or anything. So I just -- I
25 didn't tell them what I told you right now. I

1 denied being there.

2 **Q** All right. When Thomas pulled that gun, how
3 did that make you feel?

4 **A** I was scared. I just thought I was about to
5 die. I knew I was about to die at that moment. I
6 just knew he was going to kill me.

7 **Q** Did you think you had any other choice than to
8 try to get that gun from him?

9 **A** No, ma'am, I didn't. If I would have turned my
10 back to him, he would have shot me.

11 **MS. FULLWOOD:** Okay. That's all the questions
12 I have.

13 Your Honor, may we approach the bench?

14 **THE COURT:** Yes, ma'am.

15 (Whereupon, a bench conference was held off
16 the record, in the presence of the jury, but out of
17 the hearing of the jury.)

18 **THE COURT:** All right. Mr. Graham.

19 **MS. FULLWOOD:** Snoop, now answer any questions
20 that Mr. Graham has for you, okay.

21 **THE WITNESS:** Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. GRAHAM:

24 **Q** Mr. Wardlaw, you are under oath, aren't you?

25 **A** Yes, sir.

1 **Q** And you're here to tell the truth?

2 **A** Yes, sir.

3 **Q** And if the jury believes you, it's to your
4 benefit, isn't it?

5 **A** Yes, sir.

6 **Q** And you would agree with me that you have a
7 reason to lie right now?

8 **A** No, sir.

9 **Q** You don't have a reason to lie?

10 **A** No, sir.

11 **Q** Nothing you said is a lie?

12 **A** No, sir.

13 **Q** The phone number that you heard, that was your
14 phone number, correct?

15 **A** Yes, sir.

16 **Q** And you were at the Olive Garden?

17 **A** Yes, sir.

18 **Q** Thomas was your friend; isn't that correct?

19 **A** Yes, sir.

20 **Q** You told the police he was your friend, didn't
21 you?

22 **A** Yes, sir.

23 **Q** You had bought from him five or ten times
24 before?

25 **A** Yes, sir.

1 **Q** And he was your friend?

2 **A** Yes, sir.

3 **Q** It's your story that you did not come with a
4 gun; is that correct?

5 **A** Yes, sir.

6 **Q** You came with a knife?

7 **A** I didn't come with any weapon.

8 **Q** You didn't come with any weapon at all?

9 **A** No, sir.

10 **Q** Was it an accident or was it self-defense?

11 **MS. FULLWOOD:** Objection. He's asking him to
12 draw a legal conclusion, and he's asking him to
13 invade the province of the jury.

14 **THE COURT:** Sustained.

15 BY MR. GRAHAM:

16 **Q** Who pulled the trigger?

17 **A** You know, it happened so fast, I'm not sure who
18 pulled the trigger. Like I told you, we was
19 tussling over the weapon.

20 **Q** Did you mean to fire the gun?

21 **A** I didn't mean for the gun to go off.

22 **Q** You did not mean for the gun to go off?

23 **A** No, sir.

24 **Q** Was your finger on the trigger?

25 **A** No, sir, it wasn't. We was tussling, and

1 everything happened so fast, the gun just went off.

2 Q Your finger was not on the trigger?

3 A No, sir.

4 Q You did not pull the trigger?

5 A No, sir.

6 Q So you did not shoot him, correct?

7 A No, sir.

8 Q You weren't in fear for your life, were you?

9 A Yes, I was, sir.

10 Q You were? Why?

11 A Because I had a weapon pulled on me. I knew at
12 that moment I was going to die. I just felt at that
13 moment --

14 Q So it's your story that Thomas changed what he
15 was going to sell you, right?

16 A I don't know if he changed or already had
17 planned that that's exactly what he was just going
18 to give me, but it wasn't what we --

19 Q It wasn't what you agreed on?

20 A No, sir.

21 Q You would agree with me then in a drug deal,
22 you normally don't hand over the money first,
23 correct?

24 A Sir?

25 Q You don't hand over the money, do you, until

1 you see the drugs?

2 **A** Yes, sir.

3 **Q** That's correct, isn't it?

4 **A** Yes, sir.

5 **Q** So you hadn't given Thomas any money, had you?

6 **A** No, sir.

7 **Q** So all you had to do was drop the drugs and you
8 could walk away, correct?

9 **A** I tried to give him back the drugs.

10 **Q** You said -- you said that you tried to give it
11 back to him and he said he wasn't going to take them
12 back, correct?

13 **A** Yes, sir.

14 **Q** But he didn't have any money from you, did he?

15 **A** No, sir.

16 **Q** So it's your story that he pulled a gun out of
17 his pocket and did what?

18 **A** He pointed the gun at me and told me he was
19 going to kill me if I didn't give his money.

20 **Q** Okay. And this is at the -- this is right in
21 front of the Olive Garden, isn't it?

22 **A** Yes, sir, it is.

23 **Q** People are around. It's about nine o'clock,
24 and people are standing outside waiting for tables?

25 **A** Yes, sir.

1 **Q** And it's your story that Thomas Hoefer, who was
2 going there to celebrate a birthday party, decided
3 that he was going to rob you in front of all those
4 people at the Olive Garden?

5 **A** I didn't say, for one, he was going to rob me.
6 I said, when he went there, he tried to sell me some
7 weed, but it wasn't what it was supposed to have
8 been. He wanted -- he wanted his money and I didn't
9 want that product. So he pulled out a gun because
10 he said --

11 **Q** So you pulled out a gun?

12 **A** No, he pulled out a gun.

13 **Q** He pulled out a gun and threatened to kill you,
14 pointed it at you and threatened to kill you?

15 **A** Yes, sir.

16 **Q** That's your story?

17 **A** Yes, sir.

18 **Q** At the Olive Garden?

19 **A** Yes, sir.

20 **Q** Your friend threatened to kill you?

21 **A** Yes, sir.

22 **Q** Somebody who you bought from five or ten times
23 and knew from the neighborhood?

24 **A** Yes, sir.

25 **Q** Your friend?

1 **A** Yes, sir.

2 **Q** Why would your friend want to kill you?

3 **A** I don't know.

4 **Q** Why would you be afraid of your friend?

5 **A** Because like I told you, he was a lot bigger
6 than me.

7 **Q** I'm sorry?

8 **A** He was a lot bigger than me, a lot taller than
9 me. Have you ever had a weapon drawn on you before?

10 **Q** I'm asking the questions here.

11 **A** He pulled out a gun on me, of course, I was
12 fearful.

13 **Q** But he was your friend?

14 **A** He still pulled out a gun on me.

15 **Q** Why didn't you walk away?

16 **A** Because I would have been shot regardless if I
17 would have turned my back to him. He already told
18 me he was going to kill me.

19 **Q** Your friend would shoot you in the back?

20 **A** Yes, sir.

21 **Q** That's your story, right?

22 **A** Yes, sir.

23 **Q** And you had to do something about it?

24 **A** Yes, sir.

25 **Q** Your finger wasn't on the trigger, so you

1 didn't pull it. So it must have gone off in the
2 struggle. Is that what your testimony is?

3 **A** Yes, sir.

4 **Q** You would agree with me that purchasing
5 marijuana is illegal, isn't it?

6 **A** Yes, sir, it is.

7 **Q** And you would agree with me that possession of
8 a handgun for you is illegal; isn't that correct?

9 **A** Yes, sir.

10 **Q** Your burglary second conviction stops you from
11 owning a weapon, doesn't it?

12 **A** Yes, sir.

13 **Q** Carrying a gun about you is illegal because you
14 don't have a concealed weapons permit, right?

15 **A** Yes, sir.

16 **Q** You never told Lindsey Glover, your
17 stepfather -- Lindsey Glover is your stepfather and
18 has been for how many years?

19 **A** Since I was two years old.

20 **Q** Since you were two years old. He's been your
21 dad, hadn't he?

22 **A** He's been my stepdad. He's been a father
23 figure. I know who my daddy is.

24 **Q** Father figure for you. He loves you?

25 **A** Yes, sir.

1 **Q** He wouldn't lie for you or about you, would he?

2 **A** No, sir, not deliberately.

3 **Q** I'm sorry?

4 **A** He wouldn't do nothing like that deliberately.

5 **Q** He wouldn't -- if you needed something, he
6 would come and help, wouldn't he?

7 **A** Yes, sir.

8 **Q** He came that night when you called and said you
9 needed help, didn't he?

10 **A** Yes, sir, he did.

11 **Q** You never told Lindsey that it was an accident,
12 did you?

13 **A** I didn't tell Lindsey -- I told Lindsey exactly
14 what I told y'all today.

15 **Q** Well, isn't it true what you told Lindsey is
16 that he wasn't selling you the right stuff, correct?

17 **A** Yes, sir.

18 **Q** And that you pulled out a gun. Isn't that what
19 you told him?

20 **A** No, sir.

21 **Q** And that Thomas reached for the gun. Isn't
22 that what you said?

23 **A** No, sir.

24 **Q** And that you shot him?

25 **A** No, sir.

1 **Q** Because nobody's going to take from you. Isn't
2 that what you told him?

3 **A** No, sir.

4 **Q** So it's your story that whatever Lindsey
5 testified to was he was just sleepy and he didn't
6 get it right?

7 **A** Yes, sir.

8 **Q** The man who loves you, cares about you and
9 would do everything but lie to help you; isn't that
10 correct?

11 **A** Yes, sir. He was half sleep. He didn't hear
12 -- comprehend exactly everything I was telling him.
13 He made inferences.

14 **Q** I'm sorry?

15 **A** He didn't comprehend everything I was telling
16 him. He made his own inferences.

17 **Q** How many times did you talk to him about it?

18 **A** I talked to Lindsey that night.

19 **Q** You never talked to him again?

20 **A** He called me the next day.

21 **Q** And you told him again what happened, didn't
22 you?

23 **A** He had asked me did it happen by his job and I
24 told him, yeah.

25 **Q** But you told him the whole story again, didn't

1 you?

2 **A** No, sir.

3 **Q** Lindsey told you to go turn yourself in, didn't
4 he?

5 **A** Yes, sir, he did.

6 **Q** And you told him you weren't going to do that?

7 **A** Yes, sir. I was scared.

8 **Q** Because you were scared?

9 **A** Yes, sir.

10 **Q** Because you killed a man, right?

11 **A** I was scared to turn myself in. I was on
12 probation, somebody died.

13 **Q** You were living -- at one time, you lived on
14 Pelican Street with your grandma, didn't you?

15 **A** Yes, sir.

16 **Q** So that part of your lyrics about grandma and
17 Pelican, that's -- you wrote it, right? And that's
18 about you?

19 **A** Yes, sir, I wrote those lyrics.

20 **Q** When the police arrested you, you had a chance
21 to tell them this story, didn't you?

22 **A** Yes, sir, I did.

23 **Q** And you chose not to, didn't you?

24 **A** I was scared.

25 **Q** But the truth would have set you free, wouldn't

1 it?

2 **A** I didn't know that at the time, sir. I was
3 scared, somebody died.

4 **Q** You told them you weren't even at the Olive
5 Garden, didn't you?

6 **A** Yes, sir.

7 **Q** You told them you didn't know anything about
8 it?

9 **A** I told them I seen it on the news.

10 **Q** You seen it on the news.

11 **MR. GRAHAM:** Your Honor, if I could have the
12 defendant step down. I'm going to ask him to show
13 how the shooting actually happened.

14 **THE COURT:** All right. You can step down.

15 (Witness leaves the witness stand.)

16 BY MR. GRAHAM:

17 **Q** You are how tall, Mr. Gonzales?

18 **A** Five five.

19 **Q** Do I look about six feet to you?

20 **A** Yes, sir.

21 **Q** About the same size as Thomas?

22 **A** Yes, sir.

23 **Q** If you'd step this way, switch with me. I'm
24 going to be Thomas and you be yourself and you tell
25 me what happens. I give you the drugs. You look at

1 them and they're not right. How close are we?

2 **A** {Witness indicating.}

3 **Q** What does Thomas do?

4 **A** What does Thomas do?

5 **Q** Uh-huh. After you say you're not going to take
6 the drugs that you haven't paid for yet, what does
7 Thomas do?

8 **A** Thomas told me --

9 **THE COURT:** Mr. Wardlaw, I just need you, if
10 you would, elevate your voice now because you're not
11 by the microphone and the court reporter needs to be
12 able to hear you, okay.

13 **THE WITNESS:** Yes, sir.

14 BY MR. GRAHAM:

15 **Q** What did Thomas do after he told you the drugs
16 were yours? What did he say or do?

17 **A** He told me he wanted my money.

18 **Q** And what did you say?

19 **A** I told him, No, I don't want these drugs. I
20 was like, Because I'm not going to make the money
21 that I'm supposed to make off of them.

22 **Q** Then after you told your friend that, what did
23 he do?

24 **A** He pulled out a gun from his pocket.

25 **Q** Right or left hand?

1 **A** I don't remember exactly what hand it was.

2 **Q** Where are the drugs at this time?

3 **A** I had the drugs.

4 **Q** You had the drugs still in your hand?

5 **A** Yes, sir.

6 **Q** You don't remember whether it was right or left
7 handed?

8 **A** I don't remember which hand he had the gun in.

9 **Q** Where did he have the gun on his body?

10 **A** He pulled the gun out of his pocket that was
11 around his waist.

12 **Q** Is that his jacket pocket or pants?

13 **A** I didn't look what he was grabbing. I just --

14 **COURT REPORTER:** I can't hear you.

15 **THE WITNESS:** I just know he pulled out a gun.

16 BY MR. GRAHAM:

17 **Q** What kind of gun was it?

18 **A** It was black and silver.

19 **Q** Do you know what caliber?

20 **A** Later on I found out it was a .22.

21 **Q** You found that out through your discovery?

22 **A** Yes, sir.

23 **Q** Pick a hand. Which hand do you want me to use?

24 **A** Use this hand.

25 **Q** What does Thomas do with the gun?

1 **A** He points the gun at me.

2 **Q** And where is he pointing it at?

3 **A** Pointing the gun at my face.

4 **Q** Up here at your face {indicating}?

5 **A** Yes, sir.

6 **Q** Okay. What do you do?

7 **A** I reach for the gun.

8 **Q** Okay. Show me how you reach for it.

9 **A** I reached for the gun like this here

10 {indicating}.

11 **Q** Okay. Go ahead and grab my hand just like you

12 grabbed the gun.

13 **A** (Witness complies.)

14 **Q** What does Thomas do now?

15 **A** I started trying to pull the gun. I started

16 wrestling with him with the gun and the gun went

17 off.

18 **Q** Show me how the gun went off.

19 **A** I told you how it went off, sir. We was

20 wrestling with the gun. Everything happened so

21 fast.

22 **Q** Well, was it down low? Was it up high?

23 **A** It shift. It was --

24 **Q** Were y'all standing up --

25 **A** -- it shifted.

1 **Q** Were y'all standing up or people falling down?

2 **A** We were standing up.

3 **Q** Okay. So show me how the gun hit my chest and
4 I get shot.

5 **A** I don't know exactly how it hit his chest. I
6 know we was tussling. Everything happened so fast.
7 I don't remember exactly how that gun went off. I
8 don't remember where his hand was, I don't remember
9 my hand being on the trigger, anything like that.
10 All I know is that the gun went off.

11 **Q** Well, you already testified your finger wasn't
12 on the trigger, correct?

13 **A** My finger was never on the trigger.

14 **Q** Okay. So Thomas pulled the trigger?

15 **A** He had to.

16 **Q** Okay. Did Thomas ever lose control of the gun?

17 **A** Did he ever lose control of the gun? We was
18 fighting for control.

19 **Q** Okay. Because it was always in his hand
20 because his finger was on the trigger?

21 **A** Yes, sir.

22 **Q** Show me how he got shot.

23 **A** I told you how he got shot.

24 **Q** Press it up against me and show me. Show the
25 jury how it happened.

1 **A** We was tussling with the gun. I was wrestling
2 the gun. I'm trying to turn it away from me.

3 **Q** Okay.

4 **A** When I turned it away from me, I guess he got
5 shot.

6 **Q** Show me.

7 **A** I just showed --

8 **Q** Did his hand come down? Did his hand come
9 around?

10 **A** I didn't see him getting shot. I told you --

11 **Q** You know where your hands were, though, don't
12 you?

13 **A** Yes, sir.

14 **Q** Show me where your hands were when the gun went
15 off.

16 **A** Like this {indicating}.

17 **Q** It's not pointed at you when it goes off or you
18 would have got shot.

19 **A** That's why I was turning the gun. We're
20 wrestling with the gun. We turned -- he wrestling,
21 too.

22 **Q** Okay. So show me that.

23 **A** I just showed you, sir.

24 **Q** You don't know how he got shot?

25 **A** No, sir.

1 **Q** You don't know how the gun got pointed at his
2 chest like that?

3 **A** No, sir.

4 **Q** But y'all are standing straight up, right?

5 **A** Yes, sir.

6 **Q** You can have a seat.

7 **A** (Witness resumes the witness stand.)

8 **Q** You told Lindsey that it was your gun, didn't
9 you?

10 **A** Sir?

11 **Q** You told Lindsey that it was your gun?

12 **A** No, sir.

13 **Q** You didn't know -- you know what a hollow-point
14 is, right?

15 **A** Yes, sir, I know what a hollow-point is.

16 **Q** You do know?

17 **A** Yes.

18 **Q** What's a hollow-point?

19 **A** A hollow-point is a bullet where the top of it
20 is hollowed out.

21 **Q** And you know that the purpose of that is for
22 the bullet to expand when it hits something or
23 somebody, correct?

24 **A** Yes, sir.

25 **Q** And does more damage, doesn't it?

1 **A** Yes, sir, it does.

2 **Q** Do you recognize State's 28 as a hollow-point?

3 **A** That's a hollow-point.

4 **Q** And you've never seen that before?

5 **A** I seen it.

6 **Q** You've seen it in discovery?

7 **A** Yes, sir.

8 **Q** You said Thomas had a box of bullets; is that
9 correct?

10 **A** Yes, sir.

11 **Q** So when he pulls the gun out from his pants
12 pocket, you're saying a box of bullets fell out?

13 **A** The bullets dropped.

14 **Q** Where is the box?

15 **A** I threw the box away too, sir.

16 **Q** You threw the box away? How many shells did
17 you end up with?

18 **A** I don't know, sir. I know when I grabbed
19 everything, the bullets fell out my hand when I was
20 running. And when I threw the gun away, I threw the
21 bullets away with it.

22 **Q** Well, there was a trail of bullets, right?
23 About 16, 17 bullets that were on the ground that
24 tracked your progress going to Babies R Us, correct?

25 **A** Yes, sir.

1 **Q** But there wasn't a box there, was there?

2 **A** No, sir. The bullets fell out of the box.

3 **Q** The bullets fell out of the box as you were
4 running?

5 **A** Yes, sir.

6 **Q** But there were some bullets left in the box?

7 **A** Yes, sir.

8 **Q** But it's your story that you didn't know what
9 kind of bullets were used?

10 **A** Not until the discovery.

11 **Q** But you had the box with you that would have
12 told you what the bullets were, correct?

13 **A** I had no intention of reading it. I just
14 wanted to get rid of it.

15 **Q** Where did you throw those away? In the river,
16 too?

17 **A** Yes, sir.

18 **Q** So you carried the gun around with you and a
19 box or a half a box of bullets and didn't bother to
20 look at either one?

21 **A** No, sir.

22 **Q** So you didn't know they were hollow-points?

23 **A** No, sir.

24 **Q** The rap lyrics you wrote, you wrote those,
25 right?

1 **A** Yes, sir.

2 **Q** It's State's 36. The bottom of the first page,
3 Hollow tip flips, hit your nigga and your main ho.
4 How did you know they were hollow tips?

5 **A** Sir, when people write music, they don't
6 necessarily just speak on one incident.

7 **Q** So that's just a coincidence?

8 **A** Yes, sir.

9 **Q** You didn't know they were hollow-points?

10 **A** No, sir.

11 **Q** You would agree with me that's very unlucky for
12 you, isn't it?

13 **A** Yes, sir.

14 **Q** That doesn't look good, does it?

15 **A** Yes, sir.

16 **Q** The gun that was in the river, you threw it
17 away. You threw it away because you'd shot and
18 killed him, right? And you were hiding evidence,
19 correct?

20 **A** Like I tell you, everything happened so fast,
21 so when the gun went off, I took the gun with me.
22 And, yes, I did throw it in the river.

23 **Q** And I'm sorry, your story is you did not pull
24 the trigger and shoot him. It was an accident or
25 whatever you want to call it, correct?

1 **A** Yes, sir.

2 **Q** But it wasn't your gun?

3 **A** No, sir.

4 **Q** You would agree with me that if it was Thomas'
5 gun, it should have had Thomas' DNA on it and
6 Thomas' fingerprints on it, right?

7 **A** Yes, sir.

8 **Q** It wouldn't have had your fingerprints on the
9 trigger, wouldn't have had your fingerprints on
10 the -- it was a semiautomatic, right?

11 **A** Yes, sir.

12 **Q** It wouldn't have had your fingerprints on the
13 clip or any of the bullets that were used by pushing
14 down by his {sic} thumb to load it, right?

15 **A** No, sir, it wouldn't.

16 **Q** So you'd agree with me that it would make the
17 job of the jury a whole lot easier and the police if
18 you would have kept that gun?

19 **A** Yes, sir, I was scared. I didn't know to leave
20 the gun or anything. Like I told you, I never been
21 through anything like that before in my life. I
22 didn't know what to do.

23 **Q** You told Lindsey that nobody's going to take
24 from me, correct?

25 **A** No, sir.

1 **Q** You did not say that to Lindsey?

2 **A** No, sir.

3 **Q** When you went to Ce Kia's house, you were
4 hiding, weren't you?

5 **A** I wasn't hiding. I had nowhere else to go.

6 **Q** Well, you'd been with your grandma on Pelican?

7 **A** No, sir. I was getting into a lot of
8 situations living under my grandma roof, so I didn't
9 want to stay there.

10 **Q** So you weren't running and hiding from the
11 police?

12 **A** No, sir.

13 **Q** But Lindsey told you to turn yourself in and
14 you already said you weren't going to?

15 **A** Yes, sir.

16 **Q** So were you hiding or not hiding?

17 **A** I wasn't hiding, but I -- I wasn't going to
18 turn myself in. When they caught up with me, they
19 caught with me, sir.

20 **Q** And you could have explained all of this to the
21 police and you didn't?

22 **A** Like I said, I was fearful. I was scared. I
23 didn't know.

24 **Q** You use Facebook, don't you?

25 **A** Yes, sir, I use Facebook.

1 **Q** State's Number 37, that's how you were dressed
2 at the time you were arrested, correct?

3 **A** Yes, sir.

4 **Q** Wearing camo, correct?

5 **A** Yes, sir.

6 **Q** State's 38, it's for ID at this time, will you
7 take a look at it and see if that's yours?

8 **A** Yes, sir, that's mine.

9 **Q** That's your account?

10 **A** Yes, sir.

11 **Q** You're the one that posted to it, right?

12 **A** Yes, sir.

13 **Q** This was collected on January the 10th, I
14 believe, but Tuesday before, which would have been a
15 few days after, where you were posting, weren't you?

16 **A** Yes, sir.

17 **Q** It says, I'm in da forest all day, tree gear
18 down. So if you want to get at me, find me camo
19 down.

20 You're talking about being in Crane Forest,
21 right?

22 **A** Yes, sir.

23 **Q** And being tree gear down. What's that mean?

24 **A** Dressed in camo.

25 **Q** Dressed in camo. If you want to get at me,

1 find me camo down. Aren't you saying you're hiding
2 in Crane Forest?

3 **A** No, sir. I was stating where I was at and what
4 I was wearing.

5 **Q** The last line of that post, which was at 5:55
6 via a cell phone, it says, It's murking season,
7 doesn't it?

8 **A** Yes, sir.

9 **Q** That means killing season, doesn't it?

10 **A** Yes, sir. On your status, Facebook status,
11 some people like to post, like, people that you hear
12 music, post music quotes.

13 **Q** And you posted as killing season?

14 **A** I posted a music quote.

15 **Q** I'm sorry?

16 **A** I posted a music quote from the artist, Plies'
17 song.

18 **Q** This is a couple of days after Thomas was
19 killed and you posted it's killing season, didn't
20 you?

21 **A** Yes, sir.

22 **Q** Because it wasn't an accident because you
23 killed him. You pulled the trigger, didn't you?

24 **A** No, sir, I didn't.

25 **Q** State's Number 36 are your rap lyrics, right?

1 **A** Yes, sir, they are.

2 **Q** And you said on direct that you wrote this to
3 process your thoughts?

4 **A** Yes, sir. I was processing everything that was
5 going on.

6 **Q** To process your thoughts?

7 **A** Yes, sir.

8 **Q** To put down the truth about what happened,
9 right?

10 **A** I was processing it and everything, yes, sir.

11 **Q** Now, you wouldn't have wrote something that was
12 a lie, would you?

13 **A** When you write music, people don't necessarily
14 write music about everything that's true, sir.

15 **Q** Well, what you wrote about Thomas, that's who
16 you were writing about, right?

17 **A** It wasn't just about him. It was about the
18 situation that happened. Like, that's why you see
19 everything, there's a lot of stuff blocked out.

20 **Q** The first half is you talking about shooting
21 Thomas at the Olive Garden; isn't that true?

22 **A** No, sir. I just rapped about somebody getting
23 shot in the chest.

24 **Q** Well, it was somebody you shot in the chest,
25 right?

1 **A** Like I told you...

2 **Q** You can call it an accident, but it happened to
3 you and it happened to Thomas, didn't it?

4 **A** Yes, sir.

5 **Q** And that's what you wrote about?

6 **A** Yes, sir.

7 **Q** Where in here does it say that it was an
8 accident? Do you need to look at it?

9 **A** (No response.)

10 **Q** Because if you're writing about what happened,
11 that's what you should have wrote, correct?

12 **A** Yes, sir.

13 **Q** Show me where it says accident in there.

14 **A** You know, I should have found a better way
15 to --

16 **Q** I'm sorry?

17 **A** I should have found a better way to express
18 myself. I had no one else to confide in at the
19 time. I feel really bad about these lyrics, sir. I
20 shouldn't have never wrote them. There was never an
21 intent for anyone to hear them, read them.

22 **Q** I agree you shouldn't have wrote them. Where
23 does it say accident?

24 **A** I don't see it anywhere in here.

25 **Q** Where does it say that there was a struggle

1 over a gun?

2 **A** It's not in there.

3 **Q** But you would agree that the rap lyrics show
4 the truth, right?

5 **A** To some extent.

6 **Q** Well, were you lying when you wrote this?

7 **A** I'm not going to say that I was lying, but I
8 want to say that the inferences you're making are
9 not all the way true.

10 **Q** This is what's been marked as a Court's
11 Exhibit. There are things on here that were blacked
12 out. I just want to make sure that there -- you
13 didn't write out accident anywhere?

14 **A** (Witness reviewing document.)

15 **Q** Accident's not in there either, is it?

16 **A** No, sir.

17 **Q** Because that's not what happened, is it?

18 **A** I told you it was over a struggle, sir.

19 **Q** And it doesn't say anything about a struggle
20 about a gun, does it?

21 **A** No, sir, it doesn't.

22 **Q** I'm sorry?

23 **A** No, sir, it doesn't.

24 **Q** But you were writing down the truth, right?

25 **A** I was processing everything that happened.

1 **Q** You would agree with me that it sounds like
2 you're bragging in here, doesn't it?

3 **A** Like I told you, I'm actually ashamed of these.
4 I should have never wrote them. Not for one second
5 was I bragging or boasting. I was trying to process
6 in everything what had happened. I had no way --

7 **Q** So you're saying -- I'm sorry.

8 **A** Music is what I used to -- when I had no one
9 else to confide in, I'd just write music.

10 **Q** You're processing your thoughts, you're telling
11 the truth, but you don't call this bragging?

12 **A** Like I told you, when people write music, they
13 don't tell the truth in every line. You write music
14 for certain stuff that's just around.

15 **Q** The second line says, Hit him in his chest and
16 left him coughing up that yellow shit. We're
17 talking about Thomas getting shot in the chest,
18 right?

19 **A** It was just saying some -- that's a coincidence
20 that that happened in his chest, but it does say
21 that.

22 **Q** So you're not talking about Thomas when you
23 wrote that?

24 **A** No, sir.

25 **Q** You're talking about somebody else, something

1 that didn't happen?

2 **A** When you rap --

3 **Q** It's a coincidence?

4 **A** When you rap, you just rap. You write music.
5 It's a rhyme.

6 **Q** Thomas got shot in the chest, didn't he?

7 **A** Yes, sir.

8 **Q** So this is another coincidence, isn't it?

9 **A** Yes, sir.

10 **Q** Because Thomas was shot in the chest?

11 **A** Yes, sir.

12 **Q** You got, Grandma's house on Pelican. You said
13 that was true.

14 No face, then no case, News 10, no evidence.
15 Aren't you bragging there about nobody got an ID of
16 you; it was on Channel 10, so you can't be caught?
17 Isn't that what that says?

18 **A** I was not bragging. I told you, I was not
19 bragging about something I feel ashamed about, that
20 I feel bad about. I was hurt by this.

21 **Q** You feel bad about what happened?

22 **A** Yes, sir, I do.

23 **Q** Thomas got shot and he was your friend?

24 **A** Yes, sir. That's why I feel bad about it.

25 **Q** Tell me how you stayed and helped him as he

1 bled to death.

2 **A** He ran. I didn't know he was shot until I seen
3 it on the news later on.

4 **Q** You didn't even know he was shot?

5 **A** I didn't know he was shot. I told you he ran.
6 When the gun went off, he ran.

7 **Q** Why did you bother to pick up the gun?

8 **A** Because I didn't know he was shot. I didn't
9 know if he was going to get another gun. I didn't
10 know what he was going to --

11 **Q** You said he ran off?

12 **A** Yes, sir.

13 **Q** You didn't pick up the gun before he ran off,
14 did you?

15 **A** No, sir.

16 **Q** So he had run off and then you picked up the
17 gun, correct?

18 **A** No, sir.

19 **Q** Well, with which one is it?

20 **A** When he ran off, I had the gun in my hand
21 because we was tussling with it. I never picked the
22 gun up.

23 **Q** So after the gun went off, you were holding the
24 gun?

25 **A** Yes, sir.

1 **Q** Your finger was on the trigger?

2 **A** No, it wasn't.

3 **Q** You kept that gun because you brought that gun
4 and you were worried that your DNA or your
5 fingerprints were on that gun, correct?

6 **A** No, sir.

7 **Q** And that's why you threw it in the river,
8 correct?

9 **A** No, sir.

10 **Q** The bullets were your bullets that you brought,
11 correct?

12 **A** No, sir.

13 **Q** And that's how you knew they were hollow-point,
14 correct?

15 **A** No, sir.

16 **Q** Dipped in tree gear camo down like Rambo, means
17 you're hiding out, correct?

18 **A** No, it just mean I'm dressed in -- it was just
19 stating the clothes I was wearing. Don't mean I'm
20 hiding.

21 **Q** Hollow tip, we already talked about that one.
22 That's just another coincidence, correct?

23 **A** Yes, sir.

24 **Q** The last page is telling why you did it, isn't
25 it?

1 **A** The last page is just lyrically writing.

2 **Q** I'm sorry?

3 **A** It was just writing music.

4 **Q** It's just writing music so --

5 **A** Music with rhymes.

6 **Q** This is all going to be coincidences that it
7 just goes along with somebody getting shot in the
8 chest -- Oh, yeah, and we skipped that line, Caught
9 him at the Olive Garden munching on a bread stick.
10 So was that about Thomas or is that a coincidence?

11 **A** That's about him.

12 **Q** That's about Thomas?

13 **A** Yes, sir.

14 **Q** You think you playing with, you fucking with
15 something dangerous. Isn't that you bragging about
16 how tough you are?

17 **A** I'm not bragging for one minute. I'm
18 not bragging. I told you --

19 **Q** Well, tell me what it says. What does that
20 say? You think you playing with, you fucking with
21 something dangerous. What does that mean?

22 **A** It means what it -- it just say that, you know.

23 **Q** What's it mean?

24 **A** It doesn't have a specific meaning to it.

25 **Q** But you're saying that's not bragging about how

1 tough you are and how you're not to be messed with?

2 **A** I'm not bragging. Not one second am I brag --

3 **Q** But it means what it says, doesn't it?

4 **A** That's what it says.

5 **Q** And that's what it means, correct?

6 **A** Yes, sir. But I'm not bragging. I told you I
7 feel bad about this. I should have found a
8 better --

9 **Q** Well, show me in here where it says you feel
10 bad about Thomas dying.

11 **A** It doesn't say it in there.

12 **Q** You're processing thoughts about an accident
13 about your friend getting shot and killed, but those
14 thoughts aren't in here, are they? Because that's
15 not the truth, correct?

16 **A** Sir?

17 **Q** Ain't going to let shit go, nothing I'm going
18 to let slide. You wrote that?

19 **A** Yes, sir.

20 **Q** You meant it?

21 **A** Like I say -- I don't know what you want me to
22 tell you.

23 **Q** I want you to tell me what you were thinking
24 about when you were processing this accidental
25 shooting that happened to your friend and you wrote,

1 Ain't going to let shit go, nothing I'm going to let
2 slide. I want to know what you were thinking when
3 you wrote that?

4 **A** That's exactly what I was thinking.

5 **Q** That you're not going to let anything go --

6 **A** I was processing thoughts because I just had
7 lost a friend that died.

8 **Q** That you're not going to let anything go,
9 correct? That's what you're thinking when you wrote
10 this?

11 **A** I just wrote that part because it rhymed, sir.

12 **Q** It's another coincidence?

13 **A** It just rhymes.

14 **Q** It's a coincidence that you wrote, Ain't going
15 to let shit go, nothing I'm going to let slide; is
16 that a coincidence?

17 **A** I guess so, sir.

18 **Q** And it's another coincidence that that's very
19 similar to, You ain't going to take from me,
20 correct?

21 **A** Yes, sir.

22 **Q** Because you didn't tell Lindsey that?

23 **A** No, sir.

24 **Q** Got to let that nigga know fuck with me, he
25 bound to die. Aren't you bragging about killing

1 somebody who's messing with you?

2 **A** I'm not bragging, sir.

3 **Q** Well, you're telling the truth then, correct?

4 **A** I'm just rapping. When you rap, you don't
5 necessarily tell the truth about everything. When
6 you're writing music, you don't necessarily tell the
7 truth about everything. You just --

8 **Q** So you didn't mean that when you wrote it?

9 **A** No, sir.

10 **Q** You're just processing your thoughts?

11 **A** These are just thoughts.

12 **Q** About an accident?

13 **A** About an accident.

14 **Q** Hustling is a prefix, killing is a suffix. It
15 doesn't say accident. It says killing. That's a
16 conscious choice on your part, isn't it, killing?
17 It's murking season, correct?

18 **A** Like I told you, with that, that was just
19 another artist that quoted that and I quoted the
20 status.

21 **Q** This is art?

22 **A** No. It's not art. That was not art. This
23 right here is an embarrassment.

24 **Q** Sounds like a confession, wouldn't you agree?

25 **A** No, sir. It's an embarrassment. I feel bad

1 about this. Like, I'm ashamed to be looking at this
2 right now.

3 **Q** You 'bout to die if you cause disruptions.
4 Again, don't mess with me, right?

5 **A** Yes, sir.

6 **Q** I'm going for the kill, so if he lives, it's
7 conscious. You wrote that?

8 **A** Yes, sir.

9 **Q** I'm going for the kill, so if he lives, it's
10 your choice, correct?

11 **A** Yes, sir.

12 **Q** And you made that choice that day when you
13 showed up at a drug deal and brought a gun and you
14 pull it out and you shot Thomas in the chest. You
15 meant for him to die and you left him to die, didn't
16 you?

17 **A** No, sir.

18 **Q** Because it's all an accident?

19 **A** Yes, sir.

20 **Q** And everything is just a coincidence.

21 **MR. GRAHAM:** No other questions, Your Honor.

22 **THE COURT:** Ms. Fullwood, anything on redirect?

23 **MS. FULLWOOD:** No, sir.

24 **THE COURT:** All right. Thank you very much,

25 Mr. Wardlaw. You may step down, sir.

1 All right. Ma'am, you may call your next
2 witness.

3 **MS. FULLWOOD:** The defense rests, Your Honor.

4 **THE COURT:** All right. Thank you.

5 Ladies and gentlemen, the defense has rested
6 their case, which brings us to the portion of the
7 trial that I have to take up some matters of law
8 with the attorneys. So we're going to -- I'm going
9 to get you to step back into your jury room, have no
10 conversation about the case. And I'll get back with
11 you as soon as I finish taking up these matters of
12 law, okay.

13 (The jury retires to the jury room.)

14 **THE COURT:** All right. At this time, I'll take
15 up any matters on the close of all the evidence.

16 **MS. FULLWOOD:** I renew my motion for a directed
17 verdict, Your Honor, on the same grounds that I
18 argued at the close of the State's case.

19 **THE COURT:** All right. I'm going to
20 respectfully deny that. As I said earlier, I think
21 this is a question of fact that the jury needs to
22 resolve.

23 Does the State have anything in reply?

24 **MR. GRAHAM:** No, Your Honor.

25 **THE COURT:** Okay. Tell you what we'll do.

1 We'll -- we're going to be at ease for a moment and
2 I'm going to get y'all to come on back into chambers
3 and we can begin to discuss the charge and then come
4 out and put everything on the record, whatever it is
5 we decide on, okay. But if you need to take a short
6 break before we start that, do that, and then I'll
7 meet y'all back here in chambers. And so we'll be
8 at ease for a few minutes.

9 (Whereupon, there was a luncheon recess.)

10 **THE COURT:** Has the State had an opportunity to
11 review the charge?

12 **MR. GRAHAM:** Yes, Your Honor.

13 **THE COURT:** Is there anything we need to go
14 over on what I submitted?

15 **MR. GRAHAM:** No, Your Honor.

16 **THE COURT:** All right. How about the defense?

17 **MS. FULLWOOD:** I would simply take exception to
18 that portion of your charge at the bottom of page
19 seven, top of page eight.

20 **THE COURT:** All right. Give me a second, let
21 me grab that, okay.

22 **MS. FULLWOOD:** Yes, sir.

23 (Pause.)

24 **THE COURT:** All right. Go ahead.

25 **MS. FULLWOOD:** That portion of the charge that

1 reads, It is the intentional doing of a wrongful act
2 without just cause or excuse and with intent to
3 inflict the injury under circumstances -- or under
4 circumstances that the law will infer an evil
5 intent, it's my position that the language, Without
6 just cause or excuse, is burden shifting, and so I
7 take exception to it for that reason.

8 **THE COURT:** It's the portion that says without
9 just cause?

10 **MS. FULLWOOD:** Yeah, without or excuse.

11 **THE COURT:** Does the State have any issue with
12 removing that language?

13 **MR. GRAHAM:** Your Honor, I think its clear
14 under the murder, it says, The State must prove
15 beyond a reasonable doubt to prove murder, and then
16 you've got to with malice aforethought. So it's our
17 burden to prove that the defendant had malice when
18 he shot the victim. So it is our burden to prove
19 that it was an intentional doing of a wrongful act,
20 our burden to show that it was without just cause or
21 excuse, just like it's our job to disprove
22 self-defense and disprove accident. And I think
23 it's an accurate statement of the law.

24 **THE COURT:** All right. Ms. Fullwood, I'm going
25 to note your exception to that language. I think

1 that charge is an appropriate charge under the law
2 and I don't think it shifts that burden, but I
3 certainly will note your exception.

4 **MS. FULLWOOD:** Yes, sir. Thank you, Your
5 Honor.

6 **THE COURT:** Was there anything else that we
7 needed to talk about on the charge?

8 **MS. FULLWOOD:** Not about the charge.

9 **THE COURT:** All right. Now, let me make sure
10 I'm correct. After the close of all the testimony,
11 you requested a lesser-included charge of
12 involuntary manslaughter, self-defense and accident;
13 is that correct?

14 **MS. FULLWOOD:** That's right.

15 **THE COURT:** All right. We talked about
16 voluntary manslaughter and you indicated that you
17 talked with your client and you do not -- you are
18 not asking for a charge on voluntary manslaughter.

19 **MS. FULLWOOD:** That is correct, Your Honor.

20 **THE COURT:** You talked with your lawyer about
21 that, Mr. Wardlaw?

22 **DEFENDANT:** Yes, sir, Your Honor.

23 **THE COURT:** Are you in agreement with her that
24 you do not want a charge on voluntary manslaughter?

25 **DEFENDANT:** Yes, sir, Your Honor.

1 **THE COURT:** All right. So what I've got here
2 is that, other than the boilerplate language
3 discussing burden of proof and those things, when we
4 get to the actual charges, I have the murder charge
5 and then I have the involuntary manslaughter charge,
6 and then for the defenses, I have the self-defense
7 and the accident, okay.

8 **MS. FULLWOOD:** Yes, sir.

9 **THE COURT:** All right. Is the State ready to
10 proceed then with its closing arguments?

11 **MR. HUBBARD:** Yes, sir. I do want to bring
12 something to Your Honor's attention. I have a prop,
13 and I've let security know. It's a plastic -- solid
14 piece of plastic gun that I may use in the closing.

15 **THE COURT:** Any objection?

16 **MS. FULLWOOD:** Well, I would object because
17 there's no evidence in the record that shows that
18 the gun in question was a gun like that.

19 **MR. HUBBARD:** It's a prop.

20 **THE COURT:** Well, there's evidence that it was
21 a semiautomatic. There was that evidence.

22 **MR. HUBBARD:** I'm not going to convey that this
23 is how that gun looked. I wish I knew what it
24 looked like.

25 **THE COURT:** You're going to specifically state

1 that we don't know?

2 **MR. HUBBARD:** Right. Yes, sir. It simply is a
3 prop to show hand movement that was displayed by the
4 defendant himself when he testified just moments
5 ago. I think it goes to his believability, whether
6 the things that he said could have happened the way
7 he said it happened.

8 **THE COURT:** I'm going to allow it. I note your
9 objection to the use of that as a prop.

10 All right. Let's bring the jury out, please.

11 (The jury returns to the courtroom.)

12 **THE COURT:** All right. Ladies and gentlemen, I
13 have taken up the matters of law at the conclusion
14 of all the evidence when the defense rested. And so
15 we're at the point of the trial now where you're
16 going to hear from the attorneys with what we
17 commonly refer to as closing arguments. This is
18 their opportunity to argue to you what they believe
19 the evidence in this case has shown. What I told
20 you when we started this case about their opening
21 statements and that is what they tell you in their
22 opening statements is not evidence, that also
23 applies to their closing arguments.

24 The evidence in this case is closed. It is the
25 testimony that you heard from witnesses who

1 testified and any exhibits which came in during the
2 course of the trial. And these exhibits will be
3 with you in the jury room when you retire to
4 deliberate. That's the evidence in the case.

5 As I told you when the lawyers spoke to you on
6 their opening statements, they're not under oath,
7 they're not testifying, but it's their -- this is
8 their opportunity to talk with you and to discuss
9 with you what they believe the evidence in this case
10 has shown. And so it's important that you listen
11 very carefully to them as they address you with
12 their closing remarks.

13 Once they've concluded their closing arguments,
14 I will then charge you the law that is applicable in
15 this case. Once you have all of that, you'll then
16 be in a position to go back into your jury room and
17 then finally get to discuss the case and deliberate,
18 okay. So if you would, please listen carefully to
19 the attorneys as they address you with their closing
20 remarks.

21 Ms. Fullwood.

22 **MS. FULLWOOD:** May it please the Court, Your
23 Honor.

24 **THE COURT:** Yes, ma'am.

25 CLOSING ARGUMENT

1 **MS. FULLWOOD:** Madame Forelady, ladies and
2 gentlemen of the jury, this has been a really
3 unusual week. I don't think I've ever participated
4 in a trial that broke for two days because of the
5 weather. But in any event, I'm really glad that all
6 of you could come here today to serve on the jury
7 and get this matter decided.

8 One of the things that's really always struck
9 me in working on this case is how similar the two
10 young men in question really were to each other.
11 You know, they were young, about the same age, and
12 they both have really fine families, they're nice
13 people, and who really loved them and really cared
14 about them. Both of them were fathers of a child.

15 And, unfortunately, despite the children,
16 despite the loving families, they both chose to
17 dabble in marijuana, which is what leads us to today
18 and puts you where y'all are right now because it's
19 your responsibility now to sort through this
20 evidence and decide what really happened that night
21 of December 29 in 2011. It's just so, so tragic, so
22 sad and you just hate for the waste of two people
23 like that.

24 But you're not here really to reflect on the
25 emotional side of this thing. What you're here to

1 do is to think about the evidence logically,
2 clearheadedly and neutrally, to find out the truth
3 of what happened.

4 When I made my opening statement Tuesday, I
5 told you people that I thought that at the close of
6 the evidence, you were going to find that the State
7 hasn't proved that Snoop is guilty of the crime of
8 murder and I still maintain that. And the reason
9 why is they haven't proved a really essential part
10 of murder.

11 What murder is, and this is a legal definition
12 and the law -- the Judge is going to charge you on
13 the law later. And if what he says is anything
14 different than what I'm saying, he's the man, take
15 it from him because he knows best. But murder is
16 the taking the life of another with malice
17 aforethought. And I think they simply have not
18 proved malice in this case.

19 Malice is hatred, ill will, just a complete
20 evil disregard for human life and they haven't
21 proved that. I mean, what goes to prove the malice?
22 That he stared at somebody funny in a car right
23 before this happened? Of course, he probably did.
24 He was about to buy some drugs. Like he told you,
25 he had his friend park far away in case they were

1 seen, they got arrested so she wouldn't be in
2 trouble.

3 Those lyrics? Well, let me tell you something,
4 those are awful. They're atrocious. They're
5 shameful. I was born way too late to have any
6 interest in rap music, you know. I just don't get
7 it. It's because of my age. I know a lot of young
8 people from all kind of backgrounds do like it. I
9 know that, as you hear, that the lyrics can be
10 pretty vulgar and pretty shocking to people who
11 haven't just sort of listened to it a lot, I
12 suppose, and gotten over that part.

13 But when you look at those things, I also would
14 ask you to consider this: You are looking at
15 something written by a person who's only 19 years
16 old. And sure, he's a man in the eyes of the law.
17 Legally, he is a man, but he's also still a
18 teenager. And I think all of us here have enough
19 life experience to know that what you're like when
20 you're 19 is a lot different than who you are today.
21 When you've got children in that age range, you just
22 pray for the days to pass until their adulthood
23 arrives and it knocks some sense in their head.
24 They do not think the same way we do.

25 But I do think Snoop was up there telling you

1 the truth, that he was just trying to process what
2 had happened. It's not the way any of you would
3 probably process something like that, but it might
4 be the way a 19-year-old kid did, especially a
5 19-year-old kid who only has an eighth grade
6 education.

7 You know, he's not educated. He, like his
8 friend told you, has always loved that genera of
9 music and he's imitating the genera. And, yeah, now
10 it doesn't look very nice, it doesn't look good, but
11 it was written after the fact, after this had
12 happened. And don't you think that by expressing it
13 that way, he could have been just trying to remove
14 himself from the situation or trying to rationalize
15 the situation rather than have to experience more
16 painful emotions than probably he needed to be
17 dealing with?

18 There's a use of a gun. Well, first of all,
19 whose gun was it? You know, you heard Lindsey
20 Glover's testimony and he told you that Snoop said
21 it was his gun, but you know what he didn't testify
22 to, he didn't testify to ever seeing Snoop with a
23 gun before or after this. You think as his stepdad,
24 he might know. But not only -- nobody has testified
25 that they've ever seen Snoop Wardlaw with a gun at

1 any time. So where -- you would think that if
2 that's what he carried around, somebody would have
3 seen that and somebody would be in here to tell you
4 that today.

5 And look at who these two fellows are. Like I
6 say, they're a lot alike, but they're on different
7 levels of this hierarchy in this marijuana
8 distribution thing. Snoop is a guy who's going out
9 and getting some small amounts of marijuana for his
10 friends. Thomas, on the other hand, is up the chain
11 a little bit and he's a fellow dealing in larger
12 quantities.

13 Like Snoop told you, and nobody's contradicted
14 it, he bought marijuana from Thomas before five to
15 ten times. And there's nothing to show that he had
16 ever had any problem with Thomas before, so why
17 would he even, even want to have a gun? On the
18 other hand, Thomas was up the chain, he dealt in
19 larger amounts, larger quantities of marijuana,
20 presumably he probably carried more money on him,
21 wouldn't he be the type of person that would want to
22 keep a pistol by his side when he was conducting
23 these type of transactions?

24 And I guess while we're talking about the gun,
25 when Mr. Graham cross-examined Snoop, he went on for

1 quite a while trying to make him show how the gun
2 moved and all that stuff. Well, first of all, like
3 Snoop told you, and this adds up with what
4 Ms. Outing said, Thomas wasn't around the corner
5 very long before this happened, so it must have been
6 just a matter of seconds.

7 But remember when Dr. Ross was on the stand
8 Tuesday, she's the pathologist over there in
9 Newberry, and we were talking about the downward
10 direction of that bullet track, and I asked her,
11 Well, is there any way you can tell who was in what
12 position or who was doing what? And she said, No,
13 you can't. I can't tell because there are too many
14 variables in how people could have been moving
15 around in a situation like this. I can't tell you.

16 So if she can't tell you, how do you expect
17 Snoop to be able to show you what only happened, to
18 him, in a short period of time, like seconds? You
19 can't. And I don't think that proves anything
20 really. It doesn't prove anything.

21 What I want to talk to you about next are three
22 different things that are sort of related to each
23 other, but are separate and independent in the law.
24 And those things are involuntary manslaughter,
25 self-defense and accident. And it might sound sort

1 of unusual. You might say, well, what's the defense
2 here? And the thing is you're the ones who are
3 going to say. I've got to bring to your attention
4 all of the legal theories that you might could use
5 in deciding the truth of this matter, and
6 ultimately, it's going to be your decision. Like I
7 said, they're very interrelated.

8 And the first thing I'd like to discuss with
9 you is the crime of involuntary manslaughter. The
10 Judge is going to give you that as an option for
11 your verdict in this case. And it means that the
12 killing was unintentional, that there was no malice,
13 and the person was either engaged in the unlawful
14 act and not intending to cause death or great bodily
15 injury or they were engaged in a lawful act with a
16 reckless disregard for the safety of other people.

17 And when we're talking here about lawful act,
18 this drug deal is a red herring. Yeah, that was
19 unlawful, but that's not what that part of the law
20 means. What it means --

21 **MR. HUBBARD:** Your Honor, I object to that. I
22 think that's a mischaracterization of the law. It
23 may very well mean -- I think that's going out
24 beyond the limits of arguing the facts here, Judge.

25 **THE COURT:** I'm going to -- she can argue the

1 law. You can't interpret the law for the jury.

2 **MS. FULLWOOD:** Yes, sir. I was going to
3 explain what I meant in relation to the facts right
4 now.

5 **THE COURT:** All right.

6 **MS. FULLWOOD:** What you need to look at is when
7 this struggle took place, was it lawful for him to
8 grab the gun to defend himself? And I think the
9 answer to that is yes. Yes, it was lawful for him
10 to do that. And -- but it goes beyond that.

11 I think, in this case, there is sufficient
12 evidence of self-defense to entitle him to a verdict
13 of not guilty. And this is what self-defense means,
14 there are four elements of it:

15 First is you have to be without fault in
16 bringing on the difficulty. And going to buy
17 marijuana from somebody you'd bought it from five or
18 ten times before with no problems is not bringing on
19 the difficulty. That's not the difficulty. The
20 difficulty was when Snoop {sic} drew that gun.
21 That's when the difficulty started. And when Thomas
22 drew that gun, it wasn't Snoop's fault, it was
23 Thomas'.

24 The second part of it is that you have to be in
25 fear of even losing your life or getting hurt very

1 seriously. And he told you. Snoop was that scared.
2 He thought Thomas was going to shoot him. Was it
3 reasonable to feel that way? Well, I think all of
4 us would agree that if we were faced with that, we
5 would feel like we were about to die.

6 And then finally it has to be that you have to
7 try to get away from the problem if you can do so
8 without endangering yourself. And here Snoop told
9 you he was afraid that he would have gotten shot in
10 the back if he ran away.

11 And the Judge is going to also tell you about
12 self-defense, that the State has to disprove it, all
13 right. And here I don't think they have. They
14 haven't. And he's entitled to a not guilty verdict
15 on that basis.

16 Finally, that there is accident. And, again,
17 that's an unintentional killing. And if you are
18 lawfully armed, and in this case, it would be
19 because you were entitled to act in self-defense,
20 and if you were using due care, which the State
21 hasn't proved he wasn't, that is an accident. And,
22 again, that would entitle him to a verdict of not
23 guilty.

24 There's a lot for you to consider in this case,
25 and a lot of it is based on Snoop's testimony. And

1 I'll tell you this in closing: Nobody charged with
2 a crime in the United States of America has to get
3 up and testify in his or her own defense, but Snoop
4 chose to do it. He's 22 years old, eighth grade
5 education. And he not only got up there and told
6 you what happened, but he went through some grueling
7 cross-examination from Mr. Graham, which is his job,
8 we don't fault him for it, but he did, he looked you
9 in the eye and he told you what happened.

10 The State hasn't disproved that it was either
11 an accident or self-defense, and for that reason,
12 I'd ask you for a verdict of not guilty for him.
13 Thank you.

14 **THE COURT:** Thank you, ma'am.

15 **MR. HUBBARD:** Beg the Court's indulgence.

16 **THE COURT:** Yes, sir.

17 (Pause.)

18 **MR. HUBBARD:** Just alike? I almost thought I
19 wasn't hearing right. These two individuals were
20 just alike? One was there that night to celebrate
21 life, the other took it. One wasn't a major drug
22 dealer, talking about, by his words, two and a half
23 ounces. Up the chain? So somehow he's worse than
24 this man's buying it? Just alike?

25 Beginning of the trial Mr. Graham said you're

1 going to hear about a coldhearted murder and you
2 have, a coldhearted killing. And that is a
3 coldhearted murderer.

4 Now, the Judge is going to talk to you about
5 the facts -- I mean, about the law. He's going to
6 let you know that you are the judge of the facts.
7 He's the judge of the law. He's going to tell you
8 murder is the taking of another human life with
9 malice aforethought. Aforethought just means that
10 that malice had to be there at or about the time of
11 the killing, the malice, the hatred, the ill will
12 springs from the heart. That's all in this case.
13 Ms. Fullwood says there's no malice. This case is
14 dripping with it. It's seeped in malice.

15 A man goes to the Olive Garden supposedly just
16 for a little baggy of marijuana and feels so
17 slighted that he doesn't get his full two and a half
18 ounces, that he doesn't get his kush, whatever that
19 is, that it's okay to pull out a gun, that it's okay
20 to pull the trigger. That's malice.

21 Now, I know he says that's not how it happened.
22 But, folks, let's walk through what you've heard
23 with the facts because you are the judge of the
24 facts. And, again, we have to prove this case
25 beyond a reasonable doubt. There's no question

1 about it. And what does that mean? It means you
2 have to be firmly convinced that we showed you the
3 facts in this case that show he's guilty, that's it.
4 Reasonable means using your common sense. There's
5 not some formula. It's not a scientific theory.
6 It's just does your common sense say this guy's
7 guilty, then he is.

8 But look at the facts of malice here, folks.
9 Chase Frazier going with his girlfriend to the Olive
10 Garden, drives by, and it sticks in his mind two
11 years later, there is a guy, a short guy, a darker
12 skin guy than our victim standing there glaring at
13 him as he passes by. And it's clear to him he's
14 wait -- he's got his eye on me and he's waiting for
15 me to get out of here. He's mugging me is what he
16 tells his girlfriend. And just seconds after
17 getting out of sight, he hears the gunshot.
18 Seconds. He literally gets out of sight and, boom,
19 malice. He was waiting for an eyewitness to get out
20 of the way. Get out of my way, you are holding me
21 up, get out of the way. That's malice.

22 That night he tells his stepfather, Lindsey, I
23 shot someone. Tells him it's at the Olive Garden.
24 I shot someone. Not anything about an accident,
25 there's nothing about a struggle, nothing about, I'm

1 scared. No. I shot someone.

2 Did you hear Lindsey? Lindsey did not want to
3 be in this courtroom. He did not want to testify
4 against the fellow he considers his son. Did you
5 hear Lindsey? He got up there and said, This is
6 what he told me that night. And when I heard that,
7 I said what the F? What were you thinking?

8 And what did his stepdad, his stepdad say? He
9 said, This man tells me, ain't nobody going to take
10 nothing from me. That is malice. That's not an
11 accident. That's not, oh, just reckless handling of
12 a gun. Oh, darn it went off. I'm sorry. It's not.
13 That is not any of those lesser charges or defenses
14 Ms. Fullwood was just talking about. That is
15 malice. It's malice.

16 And these lyrics, good Lord, how do you even
17 begin to describe this as anything other than what
18 it is? This is malice on paper. This is malice
19 with a beat. This is malice because by God I want
20 the world to know what I did. Page one describes
21 the incident. Verse two, which is page two, tells
22 you why he did what he did.

23 And you've heard these things read to you. He
24 identifies who he is by saying he lives on Pelican
25 Street. But he talks about, Hit him in his chest

1 and leave him coughing up that yellow shit. I
2 apologize for the language, but it's not mine, it's
3 his. Does that sound like someone processing a
4 horrible incident or boasting days later?

5 Caught him at the Olive Garden, munching on a
6 bread stick. He caught him there, right here
7 {indicating}.

8 Got to let that nigga know fuck with me, he
9 bound to die. I'm going to let that shit show,
10 watch on Channel 25. Watch it. Watch what I did.
11 That's a boast.

12 And, folks, I know you've heard these words
13 over and over, but it is an insight into the heart
14 of the man that pulled the trigger. What man in
15 his -- what kid would write this after seeing
16 something traumatic, after feeling like he had been
17 the victim, because that's what they're saying, he
18 was the victim, Thomas was pulling a gun. But read
19 this, read the boast.

20 I'm going for the kill so if he live, it's
21 conscious. If he lives, it's because I chose for
22 him to live. This is malice. This can't be
23 explained by just a young man writing music that's
24 of his age group. He's writing about what he did,
25 that's the difference.

1 But he and Thomas are alike? Thomas was there
2 to celebrate life, a birthday. Yeah, he shouldn't
3 have been dealing drugs. And you know what, you
4 know what, this isn't about that. He didn't deserve
5 to be murdered right there where his girlfriend, his
6 fiancée, is sitting just feet away and his child's
7 in the back of a car. They're alike? I don't think
8 so.

9 What does the defendant tell Lindsey Glover
10 that night, that night? Ain't nobody going to take
11 nothing from me. Just like the lyrics say. Why
12 would a stepfather come in here and say that?
13 Because he was asleep at the time? Don't you think
14 when he heard, Lindsey, I shot someone, if he was
15 sleeping, he woke up like that {indicating}? It
16 wasn't a man dazed or confused about what he heard,
17 oh, I'm sorry, I put the gun in the wrong person's
18 hands. No, this man did not want to have to speak
19 to me. He did not want to appear before you, but he
20 did. He had to. I made him. But he told the
21 truth.

22 When Ms. Fullwood, at the beginning of this
23 trial, asked you to do something that you can't do,
24 think of that man as your child, you can't do that.
25 You wouldn't be qualified to sit on a jury if your

1 child was on trial for murder. You couldn't be fair
2 and impartial. Who could? So to ask you to do that
3 is to ask you not to be fair, to not be impartial.
4 You can't do that. But now if the Judge tells you
5 otherwise, you follow him, but he's not going to
6 tell you that.

7 What he will tell you is you are the judge of
8 the law -- the facts. He's the judge of the law.
9 And there's a wall y'all can't climb over. He can't
10 interfere with your decision on the facts and you
11 have to take the law as he gives it.

12 And you're not here to punish someone or to
13 have mercy. Many times when you walk into a
14 courtroom, you just assume, oh, we're here to punish
15 someone or maybe to cut them a break, that's not it.
16 Juries do not punish. Juries do not and cannot have
17 mercy. There is a place for that, but it is up on
18 the bench. The man who wears that light little robe
19 when he is faced with that choice, that robe weighs
20 a ton and it is his decision alone to weigh justice,
21 punishment, mercy.

22 Only you, though, have the authority to
23 determine the facts. You can't feel sorry for this
24 man or for his family or say, oh, he's young, I got
25 to cut him a break. That's not your job. It's just

1 the facts. Like that old Dragnet series, just the
2 facts.

3 Now, the defendant's testimony, what an insight
4 into who he is. He says Thomas had a gun. Thomas
5 pulls the gun on him and says, I ought to shoot your
6 ass.

7 Now, what kind of sense does that make? Thomas
8 is there with his girlfriend, his fiancée. He has
9 his small child in the back of a car. He's waiting
10 on her family to show up. What's he going to do,
11 shoot a man and then go, all right, I'm going to go
12 eat now? I'm going to go eat with my family, her
13 family, we're going to be a family. I'm going to
14 kill a man on the sidewalk and then go eat.

15 He didn't have a gun. It does make more sense
16 he thought he was going to make a little bit more
17 money before he went into a restaurant.

18 And, folks, I'm not here to justify selling
19 drugs. It's wrong. You aren't here to judge the
20 victim either, though. Who the victim is ultimately
21 doesn't matter for you. Your verdict speaks about
22 us. Is this a proper thing to happen in our county?

23 **MS. FULLWOOD:** Objection, Your Honor, Golden
24 Rule.

25 **MR. HUBBARD:** Absolutely not.

1 (Whereupon, a bench conference was held off
2 the record, in the presence of the jury, but out of
3 the hearing of the jury.)

4 **THE COURT:** Overruled.

5 **MR. HUBBARD:** Y'all aren't here to punish
6 anybody, have mercy on anybody. You aren't here to
7 judge anybody, but determine the facts. And a
8 verdict is a verdict regardless of who a victim is,
9 regardless of who's out there in this courtroom
10 right now. You speak for the people, the community.

11 Now, the defendant says all his actions were
12 because he was scared. I not only ran because I was
13 scared -- but he had a fight first -- I took the
14 gun, the bullets, everything and ran because I was
15 scared. But it doesn't make sense, does it, folks,
16 that he takes the one thing, and this is a prop, a
17 plastic prop, he takes the one thing that could have
18 helped prove his case? It would have had DNA if it
19 was the victim's, would it not? Pop out that little
20 slide, the magazine, if it was the victim's, he
21 would have loaded it. It's understandable bullets
22 won't have DNA, particularly if they're in a box and
23 hadn't been used, but a gun? Why would you throw
24 away a gun if you're innocent, if it's an accident,
25 if you're the victim? Why would you run at all?

1 And he said, I didn't even know if he was shot
2 or not; I heard a gun go off. He did. He wrote
3 about it before the cops ever arrested him, right
4 here {indicating}.

5 He runs and says he won't turn himself in. And
6 he explains the fight scene. A man who's five five
7 going up against a guy who's about six feet tall,
8 I'm a little bit more than that, and he has our
9 victim, left handed, holding a gun up like this
10 {indicating} and somehow it goes off.

11 Now, one thing I'll agree with Ms. Fullwood on,
12 it was a downward angle. How in the world do you
13 get that, folks? How do you get it? How do you get
14 a downward angle if his hand never left the gun,
15 which is what the defendant said, that Thomas' hand
16 is the one that held the gun, Thomas' hand pulled
17 the trigger? How do you get that, folks? How do
18 you get it? Did he have rubber arms?

19 I bet there's a better explanation. How does a
20 five five man feel when he holds a gun like this?
21 He feels eight feet tall. You can be as tall as you
22 want when you're holding a gun.

23 **MS. FULLWOOD:** That's outside the evidence as
24 far as how a gun was held.

25 **MR. HUBBARD:** I can argue and they can consider

1 it.

2 **THE COURT:** It's just argument. He's not
3 saying that's what happened here. He's just
4 arguing. Overruled.

5 **MR. HUBBARD:** That would explain a downward
6 angle. Explain how a little man thinks he feels
7 big, boast about it because he had an equalizer, he
8 had something that made him feel big, he had a gun.
9 But the one thing he can't explain are the facts.
10 He can't explain it.

11 Now, our pathologist said she can't tell you
12 the position of the body, but you know what, that
13 man did. He said they were standing straight the
14 whole time face-to-face. How do you get a downward
15 angle? He didn't think that one through. He can't
16 come in here and defy physics. He can't defy
17 science. He can't explain what didn't happen. He
18 told Lindsey nothing of a struggle, nothing of an
19 accident because it didn't happen. He got peeved
20 that he didn't get what he wanted, so he pulled a
21 gun.

22 Remember Lindsey didn't want to say he pulled a
23 gun. Remember he pulled it out, he pulled it off
24 from the side. And I made him say what do you mean.
25 Lindsey didn't mishear that. He heard his stepson

1 that night say, I pulled a gun and I shot a man.
2 Lindsey wasn't half asleep. Lindsey told him to
3 turn himself in and he refused.

4 The mention of hollow tips in this, how did he
5 know about hollow tips? The defendant said on the
6 stand that it's just a coincidence that I mentioned
7 hollow tips; I didn't know they were hollow tips.
8 Because this is written before he's arrested. This
9 is written before any evidence is turned over to him
10 and his lawyer. How did he know about hollow tips
11 being used in this? Oh, it's just a coincidence.
12 Everything was a coincidence. Everything that
13 happened in this case was a coincidence and what
14 misfortune for this poor man over here. Everything.
15 He can explain it all and, you know, it just, I'm
16 sorry, it's just a coincidence.

17 Is it a coincidence that on Facebook he uses
18 the same hate-filled language of murking season, the
19 same type of hatred you see in this rap song?
20 Murking season, it's killing season, days after this
21 killing. All of that shows his heart at the time
22 and the night of this killing. It's malice.
23 There's not a hint of accident.

24 To buy into anything he said about accident,
25 about self-defense, first of all, you have to find

1 that he wasn't at fault in any way. You can't do
2 that, not even by his own testimony. But you would
3 have to believe everything he's saying. You would
4 have to buy lock, stock and barrel everything he's
5 saying, that he's believable. And, folks, it just
6 doesn't make sense not even a little bit.

7 The truth, ladies and gentlemen, is what you're
8 looking for. A verdict comes from Latin for a
9 phrase that means to find the truth. That's your
10 job.

11 What were the facts, the true facts? And the
12 facts are: This man went to buy marijuana. This
13 man took a gun with him. He loaded it with hollow
14 tips. This man felt slighted, just like that rap
15 lyric says. When he didn't get what he wanted, and
16 he makes it clear, if I don't get what I want, I'm
17 going to screw with you, I'm going to kill you.
18 That's the truth.

19 The truth is he had the gun. He pulled the
20 trigger. The fact is and the truth is he told his
21 stepdad that night. He had an opportunity to tell
22 law enforcement. He ran from the truth and lied,
23 not out of fear of them pinning something on him,
24 but on fear of finding out. He bragged about it.
25 The truth is right here in front of you.

1 You know, they say the eyes are like a window
2 to the soul. There's a lot you can learn and see
3 about a person looking in their eyes. A stranger, a
4 complete stranger looked into this man's eyes and it
5 scared him. He saw the hostility already there.
6 They were the eyes of a man who was getting ready to
7 pull the trigger.

8 But another man, Thomas, Thomas Hoefer, had
9 someone looking in his eyes, Zachary Graham, as he
10 held his hand. Thomas Hoefer never had anything to
11 say because he couldn't. His lungs and mouth were
12 full of blood because of that man. And he looked up
13 at a complete stranger as his life slipped away.

14 Today the truth is right here looking at you.
15 Look at it square in the eyes, folks. Set aside all
16 the -- all the silly talk, the unbelievable,
17 unreasonable talk. The truth is there was no
18 accident. The truth is this wasn't some minor crime
19 of involuntary manslaughter. It wasn't
20 self-defense. The truth is Gonzales Wardlaw is a
21 murderer. Thank you.

22 CHARGE OF THE COURT

23 **THE COURT:** Mr. Hubbard.

24 Ladies and gentlemen, when we started this
25 case, I told you that you were the judges of the

1 facts and that I was the judge of the law. And so
2 during the course of this trial, it's been
3 appropriate for me to be up on the bench and to
4 basically be out of the way while the lawyers
5 present to you the facts in this case. Well, we've
6 reached the course of the trial now that you and I
7 are in this together, you, as the judge of the
8 facts, and me, as the judge of the law. So I come
9 down here to be with you as I give you the charge on
10 the law.

11 Now, I will send this back into the jury room
12 with you. You'll have this in the jury room if you
13 need it, but I'm going to basically read it verbatim
14 because I don't want to misstate anything or leave
15 anything out. So please listen carefully as I
16 charge you the law as it applies to this case.

17 Madame Forelady and members of the jury, you've
18 heard all of the evidence and the arguments of both
19 parties. I will now explain to you the law which
20 applies to this action.

21 The indictment charges the defendant, Gonzales
22 R. Wardlaw, with the offense of murder. I remind
23 you that the fact that the defendant was arrested,
24 charged and indicted in this case is not evidence in
25 this case and it cannot be considered by you as

1 evidence of guilt in this case, nor does it create
2 any presumption or inference of guilt. The
3 indictment is simply the formal, written instrument
4 which contains the charge made against the
5 defendant. It is the formal document by which this
6 case is brought into court.

7 Now, as I told you, I have a copy of these
8 instructions in written form that I will send with
9 you into the jury room. During your deliberations,
10 you may refer to these instructions to guide you in
11 your decision making; however, you must consider
12 these instructions as a whole and not follow some
13 and ignore others.

14 Now, the defendant has pled not guilty to this
15 indictment and to the charge, and that plea puts the
16 burden on the State to prove the defendant guilty.
17 A person charged with committing a criminal offense
18 in South Carolina is never required to prove him or
19 herself innocent.

20 I charge you that it is an important rule of
21 law that a defendant in a criminal trial no matter
22 what the seriousness of the crime may be, will
23 always be presumed to be innocent of the crime for
24 which the indictment was issued unless guilt has
25 been proven by evidence satisfying you of that guilt

1 beyond a reasonable doubt. This presumption of
2 innocence does not end when you begin your
3 deliberations, but it accompanies the defendant
4 throughout the trial until you reach a verdict of
5 guilt based on evidence satisfying you of that guilt
6 beyond a reasonable doubt.

7 The presumption of innocence is not a mere
8 legal theory. It is not just a legal phrase, but it
9 is a substantial right to which every defendant is
10 entitled unless you, the jury, are satisfied from
11 the evidence of the defendant's guilt beyond a
12 reasonable doubt.

13 So what is a reasonable doubt in the law? The
14 State has the burden of proving the defendant guilty
15 beyond a reasonable doubt. Some of you may have
16 served as jurors in civil cases where you were told
17 that it is only necessary to prove that a fact is
18 more likely true than not true, such as by the
19 greater weight or the preponderance of the evidence.

20 In criminal cases, the State's proof is more
21 powerful than that. It must be beyond a reasonable
22 doubt. Proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the defendant's
24 guilt.

25 Now, there are very few things in this world

1 that we know with absolute certainty and in criminal
2 cases, the law does not require guilt or proof that
3 overcomes every possible doubt. The State's burden
4 is simply -- requires that they prove their case
5 beyond any reasonable doubt.

6 I remind you that during this trial, you and I
7 have certain duties to perform. As the trial judge,
8 it is my responsibility to preside over this trial.
9 And I have also had the duty to rule on the
10 admissibility of evidence offered during the course
11 of this case.

12 You are to consider only the competent evidence
13 that is before you. You are to consider only the
14 testimony which has been presented from the witness
15 stand, any exhibits which have been made a part of
16 this record in this case and any stipulations or
17 agreements of counsel.

18 I have the additional duty to charge you the
19 law applicable to this case. As the presiding
20 judge, I am the sole judge of the law in this case
21 and it is your duty as jurors to accept and to apply
22 the law as I now state it to you. If you already
23 have an idea as to what the law is or what you think
24 the law should be and it does not agree with what I
25 now tell you the law is, you must abandon your idea

1 because you are sworn to accept the law and apply
2 the law exactly as I state it to you.

3 In every case that is tried in this court
4 before a jury, the jury becomes the sole and the
5 exclusive judge of the facts. A trial judge cannot
6 intimate, state, comment on or make any statement to
7 a trial jury about the facts in a case.

8 Since you, the jury, are the sole judge of the
9 facts in this case, you are not to infer from what I
10 have said during the progress of this trial in
11 ruling upon the admissibility of evidence or
12 otherwise or anything that I say now during the
13 course of these instructions to you that I have any
14 opinion about the facts in this case. The law does
15 not allow me to have an opinion about the facts.
16 This is a matter solely for you, the jury, to
17 determine. As jurors, it is your duty to determine
18 the effect, value, weight and truth of the evidence
19 presented during the trial.

20 Now, there are usually two types of evidence
21 which are generally presented during a jury trial.
22 There's direct evidence and there's circumstantial
23 evidence.

24 Direct evidence is the testimony of a person
25 who claims to have actual knowledge of a fact, such

1 as an eyewitness. It is evidence which immediately
2 establishes the main fact to be proved.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of
5 a fact. In other words, it is evidence which
6 immediately establishes collateral facts from which
7 the main fact may be inferred. Circumstantial
8 evidence is based on inference and not on personal
9 knowledge or observation.

10 Now, the law makes absolutely no distinction
11 between the weight or the value to be given to
12 either direct or circumstantial evidence, nor is
13 there any greater degree of certainty required of
14 circumstantial evidence than of direct evidence.
15 You should weigh all of the evidence in this case.
16 And after weighing all of the evidence, if you are
17 not convinced of the guilt of the defendant beyond a
18 reasonable doubt, you would find the defendant not
19 guilty.

20 Necessarily, you're going to have to determine
21 the credibility of the witnesses who have testified
22 in this case. Credibility, ladies and gentlemen,
23 simply means believability. It becomes your duty as
24 jurors to analyze and to evaluate the evidence and
25 to determine which evidence convinces you of its

1 truth.

2 In evaluating eyewitness testimony, you should
3 remember that the State must prove the identity of
4 the defendant as the person who committed the crime
5 beyond a reasonable doubt.

6 In determining the believability of witnesses
7 who have testified in this case, you may believe one
8 witness over several or several witnesses over one.
9 You may believe a part of the testimony of a witness
10 and reject the remaining part of that testimony, or
11 you may believe the testimony of a witness in its
12 entirety or reject it in its entirety. You may
13 consider whether any witness has exhibited to you
14 any interest, bias or other motive in this case.
15 You may also consider whether a witness is seeking a
16 personal gain, as well as the appearance and the
17 manner of a witness while on the witness stand.

18 You have the right, ladies and gentlemen, to
19 consider anything that is in this record that will
20 help you in judging the credibility of the witnesses
21 who have testified.

22 Now, the rules of evidence ordinarily do not
23 permit witnesses to testify to opinions or
24 conclusions. There's an exception to this rule that
25 exist for witnesses that we call expert witnesses.

1 A witness who, by education and experience, has
2 become an expert in some art, science, profession or
3 calling may state an opinion as to a relevant and
4 material matter in which the witness claims to be an
5 expert and may also state the reasons given for that
6 opinion.

7 You should consider any expert opinion received
8 into evidence in this case and like any other
9 evidence, give it the weight that you think it
10 deserves. An expert witness' testimony is to be
11 given no greater weight than that of any other
12 witness simply because that witness is an expert.
13 Further, you're not required to accept an expert's
14 opinion even though it's not contradicted.

15 Now, the defendant in this case is charged with
16 the crime of murder. The following are the elements
17 that the State must prove beyond a reasonable doubt
18 to prove murder and there are two:

19 First, that the defendant killed another person
20 and that he did so with malice aforethought. Malice
21 is hatred, ill will or hostility toward another
22 person. It is the intentional doing of a wrongful
23 act without just cause or excuse and with the intent
24 to inflict an injury or under circumstances that the
25 law will infer an evil intent.

1 Malice aforethought does not require that
2 malice exist for any particular time before the act
3 is committed, but malice must exist in the mind of
4 the defendant just before and at the time that the
5 act is committed; therefore, there must be a
6 combination of the previous evil intent and the act.

7 Malice aforethought may be expressed or
8 inferred. These terms expressed and inferred do not
9 mean different kinds of malice, but merely the
10 manner in which malice may be shown to exist, that
11 is a -- that is either by direct evidence or by
12 inference from the facts and circumstances which are
13 proved.

14 Expressed malice is shown when a person speaks
15 words which express hatred or ill will for another
16 or when the person prepared beforehand to do the act
17 which was later accomplished. For example, lying in
18 wait for a person or any other acts of preparation
19 going to show that the deed was within the
20 defendant's mind that would be expressed malice.

21 Inferred malice may be found to exist when
22 circumstances demonstrate a wanton or a reckless
23 disregard for human life or when a reasonably
24 prudent person would have known that, according to
25 common experience, there was a plain and strong

1 likelihood that death would follow the contemplated
2 act.

3 Now, if you find that the State has failed to
4 prove beyond a reasonable doubt that the defendant
5 committed murder, you may consider whether the State
6 has proved beyond a reasonable doubt that the
7 defendant committed involuntary manslaughter. To
8 prove involuntary manslaughter, the State must prove
9 beyond a reasonable doubt that the defendant
10 unintentionally killed the victim without malice,
11 but while engaged in an unlawful activity not
12 naturally tending to cause death or great bodily
13 harm or that the defendant unintentionally killed
14 the victim without malice while engaged in a lawful
15 activity with reckless disregard for the safety of
16 others. And unintentional means that the defendant
17 did not intend for anyone to be killed or seriously
18 injured.

19 Reckless disregard for the safety of others is
20 more than mere negligence or carelessness. Mere
21 negligence or carelessness is the failure to use the
22 care that a person of ordinary reason would use
23 under the same circumstances.

24 Recklessness is a conscious failure to use
25 ordinary care. Reckless disregard for the safety of

1 others means that you are not interested in the
2 consequences of your acts or the rights and the
3 safety of others.

4 If a person who knows or should know that
5 ordinary care requires certain precautions to be
6 taken for the safety of others when using a
7 dangerous instrumentality, such as a gun or a car,
8 but that person fails to use those precautions
9 without concern, the person's actions are considered
10 reckless.

11 The State must also prove beyond a reasonable
12 doubt that the defendant's act was the proximate
13 cause of death. And proximate cause is the direct
14 cause. It is the immediate cause. It is the
15 efficient cause. It is the cause that without
16 which, the death of the victim would not have
17 resulted.

18 There must be a chain of causation from the
19 time of the injury inflicted by the defendant until
20 the time of the victim's death. Proximate cause
21 does not necessarily mean that it occurred
22 immediately prior to death. The violation of a
23 statute, if it is the proximate cause of an injury,
24 is evidence of recklessness.

25 Now, the defendant has raised the defense of

1 self-defense. Self-defense is a complete defense,
2 and if it is established, you must find the
3 defendant not guilty.

4 The State has the burden of disproving
5 self-defense by proof beyond a reasonable doubt. If
6 you have a reasonable doubt of the defendant's guilt
7 after considering all of the evidence, including the
8 evidence of self-defense, then you must find the
9 defendant not guilty. On the other hand, if you
10 have no reasonable doubt of the defendant's guilt
11 after considering all of the evidence, including the
12 evidence of self-defense, then you must find the
13 defendant guilty.

14 The following elements are required to
15 establish self-defense: First, the defendant must
16 be without fault. The defendant must be without
17 fault in bringing on the difficulty. If the
18 defendant's conduct was the type which was
19 reasonably calculated to and did provoke a deadly
20 assault, the defendant would be at fault in bringing
21 on the difficulty and would not be entitled to an
22 acquittal based on self-defense.

23 Second, the second element of self-defense is
24 that the defendant was actually in imminent danger
25 of death or serious bodily injury or that the

1 defendant actually believed that he was in imminent
2 danger of death or serious bodily injury. If the
3 defendant was actually in imminent danger, it must
4 be shown that the circumstances would have warranted
5 a person of ordinary firmness and courage to strike
6 the fatal blow to prevent death or serious bodily
7 injury. If the defendant believed he was in
8 imminent danger of death or serious bodily injury,
9 it must be shown that a reasonably prudent person of
10 ordinary firmness and courage would have had the
11 same belief.

12 In deciding whether the defendant actually was
13 or believed he was in imminent danger of death or
14 serious bodily injury, you should consider all of
15 the facts and circumstances surrounding the crime,
16 including the physical condition and the
17 characteristics of the defendant and the victim.

18 Now, the defendant does not have to show that
19 he was actually in danger. It is enough if the
20 defendant believed he was in imminent danger and a
21 reasonably prudent person of ordinary firmness and
22 courage would have had the same belief. The
23 defendant has the right to act on appearances even
24 though the defendant's beliefs may have been
25 mistaken.

1 It is for you, the jury, to decide whether the
2 defendant's fear of immediate danger of death or
3 serious bodily injury was reasonable and would have
4 been felt by an ordinary person in the same
5 situation.

6 The final element of self-defense is that the
7 defendant had no other probable way to avoid the
8 danger of death or serious bodily injury other than
9 to act as the defendant did in this particular
10 instance.

11 Now, a defendant has no duty to retreat if by
12 doing so, the danger of being killed or suffering
13 serious bodily injury would increase. A person
14 cannot be required to make an exact calculation as
15 to the degree or the amount of force which may be
16 needed to avoid death or serious bodily harm;
17 therefore, in self-defense, the defense -- the
18 defendant has the right to use the force needed to
19 avoid death or serious bodily harm.

20 The force used in self-defense does not have to
21 be limited to the degree or the amount of force used
22 by the victim. The defendant has the right to use
23 as -- so much force as appeared to be necessary to
24 complete self-protection in which a person of
25 ordinary reason and firmness would have believed was

1 needed to prevent death or serious bodily harm.

2 The defendant also has raised the defense of
3 accident. An act may be excused on the ground of
4 accident if it is shown that the act was
5 unintentional, that the defendant was acting
6 lawfully and that reasonable care was used by the
7 defendant in the handling of the weapon. For
8 example, if a person is lawfully armed in
9 self-defense and the gun accidentally discharges,
10 the defense of accident would apply. However, a
11 person can be acting lawfully even if he is in
12 unlawful possession of a weapon if he was entitled
13 to arm himself in self-defense at the time of the
14 shooting.

15 The burden is on the State to prove beyond a
16 reasonable doubt that the act was not an accident,
17 but was caused by the negligence or the carelessness
18 on the part of the defendant in handling a dangerous
19 instrumentality or by unlawful activity by the
20 defendant.

21 Now, Madame Forelady and members of the jury,
22 as you retire to begin your deliberations, I want to
23 wish to you -- or I want to express to you the hope
24 that each of you will be mindful of the importance
25 of your responsibility. You're not called upon to

1 serve as jurors very often and the proper
2 performance of the duty requires each of you to
3 reach the height of freeing your mind of all
4 improper influences.

5 As the presiding officer of the court, I'm
6 vitally concerned that whatever verdict you reach
7 will be the result of your going into that jury
8 room, confining your consideration to the law and to
9 the evidence that you've heard in this courtroom,
10 weighing it fairly and impartially as I have every
11 confidence you will do. Your verdict in this case
12 cannot be based on sympathy, compassion, prejudice
13 or emotion or some other consideration that's not
14 found in the evidence. And remember what I told you
15 earlier and that is that your verdict in this case
16 must be unanimous.

17 Now, Ms. Bradley, this notebook will be in the
18 jury room with y'all. You can refer to these
19 instructions. In the front cover is a verdict form
20 and at the top of the verdict form it simply has the
21 caption of the case. You'll do your deliberations
22 and you'll be in charge of filling out the verdict
23 form that reflects the jury's verdict.

24 And the verdict form -- now, there's no
25 significance to the order in which these things are

1 listed. It's just any time you list more than one
2 thing, you have to list something ahead of another
3 one. So there's no significance to the order. It's
4 just simply that you'll -- and you'll mark the
5 appropriate decision of the jury. And it's simply,
6 We, the jury, find the defendant, Gonzales R.
7 Wardlaw, either guilty of murder or guilty of
8 involuntary manslaughter or not guilty. Those are
9 your three options to consider as you go through the
10 evidence in this case.

11 And then if you'll just -- once the jury has
12 reached a verdict, if you'll sign as the Forelady
13 and knock on the door and let the bailiffs know
14 you've reached a verdict and then we'll bring you
15 out to receive that.

16 Now, I'm going to get you to step into your
17 jury room, but before you begin your deliberations,
18 don't have any conversation yet, I'm going to just
19 briefly confer with the attorneys to make sure that
20 I haven't left out anything or misstated anything.
21 If I have and I need to bring you back out and
22 correct that or add something, I will do that. But
23 if everything is good, we'll collect these exhibits
24 and we'll get those and this notebook and when you
25 receive those, that's your cue to begin your

1 deliberations, okay. So if you would, step back in
2 the jury room and await the evidence.

3 (The jury retires to the jury room.)

4 **THE COURT:** Any exceptions or objections to the
5 charge from the State?

6 **MR. HUBBARD:** No, sir, Your Honor.

7 **THE COURT:** And, Ms. Fullwood, I know you
8 except to the malice language.

9 **MS. FULLWOOD:** That's right that I previously
10 put on the record.

11 **THE COURT:** And is there anything other than
12 that?

13 **MS. FULLWOOD:** No, Your Honor.

14 **THE COURT:** All right. Well, that exception is
15 noted. And if y'all would, get with Stacy and make
16 sure that everything that's supposed to go back is
17 in order and we'll send it back, okay.

18 (Pause.)

19 **THE COURT:** Ask Mr. Poole if he'll step out.

20 (The alternate enters the courtroom.)

21 **THE COURT:** Mr. Poole.

22 **JUROR:** Yes, sir.

23 **THE COURT:** I want to thank you for your
24 service. I'm going to -- you'll probably be
25 thankful that I'm going to excuse you now, but

1 everyone seems healthy and able to deliberate and do
2 the job. So the unfortunate thing about being an
3 alternate is you've got to go through everything
4 they go through, but once they start deliberating,
5 then that kind of ends your service.

6 **JUROR:** Yes, sir.

7 **THE COURT:** I appreciate it very much. Do you
8 need a work excuse or anything?

9 **JUROR:** No. I'm self-employed.

10 **THE COURT:** All right. Thank you so much, sir.
11 I appreciate it.

12 (The alternate was excused.)

13 **THE COURT:** All right. We'll be at ease then
14 while the jury is deliberating and if y'all -- well,
15 we'll find you if you go anywhere.

16 (The jury commences its deliberations at
17 4:05 p.m.)

18 (A recess transpired.)

19 **THE COURT:** Folks, I've been informed that the
20 jury has reached a verdict. I do not know -- as I
21 said, I've been informed the jury has a verdict. I
22 don't know what their verdict is, but I will tell
23 you what I tell folks all the time in every case
24 that I try whether it be a criminal or a civil case,
25 I don't expect everybody to agree with the jury's

1 verdict, that is never the case. I don't --
2 obviously, don't require that people agree with the
3 jury, but I do require this, that their verdict be
4 received in a professional manner.

5 And so I realize that in cases like this that
6 involve the loss of a loved one, that there are
7 emotions tied into it. If you're not able to
8 control your emotions and you can't receive the
9 verdict, whatever it is, whether you agree with it
10 or you disagree with it, if you don't think you can
11 control your emotions, then I need for you to step
12 out of the courtroom.

13 Because I will tell you this, if there are any
14 outbursts, if there are any improper comments or
15 actions by anyone, whoever that person is, I'll
16 immediately have you taken into custody and you
17 won't be going home tonight, I can promise you that,
18 because I'm going to hold you in contempt because
19 I'm ordering everybody right now that I'm not going
20 to tolerate any outburst or anything that's not just
21 professional in receiving the jury's verdict.

22 Because, and I say that for this reason, again,
23 as I told you earlier, I don't expect everyone to
24 agree with it, but you need to understand it is
25 their collective verdict and whether you agree with

1 it or don't agree with it, it is what it is. And
2 you're welcome and you're entitled to your opinion,
3 but you're not entitled to disrupt the court with
4 that opinion.

5 So, please, if you don't think you can control
6 your emotions, you would do yourself a service by
7 stepping out of the courtroom because I'm not going
8 to tolerate anything, okay.

9 So having said that, is the State ready to
10 receive the verdict of the jury?

11 **MR. HUBBARD:** Yes, sir, Your Honor.

12 **THE COURT:** Is the defense ready?

13 **MS. FULLWOOD:** Ready, Your Honor.

14 **THE COURT:** If you'll please bring the jury in.

15 (The jury returns to open court to report
16 its verdict at 5:07 p.m.)

17 **THE COURT:** Ms. Bradley, has the jury reached a
18 unanimous verdict, ma'am?

19 **FORELADY:** Yes, Your Honor.

20 **THE COURT:** If you don't mind passing that to
21 the bailiff.

22 (The Clerk hands the verdict to the Judge.)

23 **THE COURT:** Madame Clerk, if you would please
24 publish the jury's verdict.

25 VERDICT OF THE JURY

1 **THE CLERK:** Indictment 2012-GS-32-1261, the
2 State versus Gonzales Wardlaw. We, the jury, find
3 the defendant, Gonzales R. Wardlaw, guilty of
4 murder. And it is so signed Ann Bradley, Forelady,
5 February 14th of 2014.

6 Madame Forelady, ladies and gentlemen of the
7 jury, if this is your verdict, please indicate each
8 of you by raising your right hand.

9 All hands raised, Your Honor.

10 **THE COURT:** Thank you, ma'am.

11 Ladies and gentlemen, I want to thank you for
12 your service. You have done a great job all week of
13 being patient with the circumstances. Jury service
14 isn't always easy because as a juror, you're asked
15 to leave the courtroom, come back into the courtroom
16 and things take place outside your presence. And as
17 I told you when we started the case, there were
18 times that I would ask you to step out because in
19 taking up matters of law, sometimes it's important,
20 so that we don't get involved in your role as the
21 fact finders, it's important that you not be present
22 while I take up matters of law so that we can freely
23 discuss testimony and issues without interfering
24 with your role. But you've been very patient
25 throughout the process and I very much appreciate

1 everybody's work and effort.

2 As I told you when we started this week, that
3 state law requires only -- does not require that you
4 serve on jury duty more than once every three
5 calendar years. So you have completed your service
6 this week. You've earned that exemption. If you
7 receive a summons for jury duty here in state court
8 for the balance of this year, all of 2015 and all of
9 2016, if you wish to exercise that exemption and not
10 serve if you receive that summons, then you
11 certainly are welcome to do that.

12 I do tell people all the time, though, it is
13 just an exemption. It doesn't mean you're not
14 qualified to serve. So if you would like to serve
15 again, you certainly have the right to do that and I
16 would encourage you to do it. It's a very high
17 service that you give to your community. And I want
18 to thank you again for what you've done this week
19 here during this term of court.

20 Now, if anyone needs a work excuse, they'll be
21 in your checks, but if you need one before then, we
22 can get that for you, but if your employer would
23 wait a couple of days, they'll put that in your
24 check with you when you receive it, okay. So I want
25 to again thank you. I don't want to hold you up any

1 longer. If you would, as you file out, just leave
2 your juror badges right there with the bailiff and
3 you're free to go.

4 Ms. Bradley, I need you to sign this before you
5 leave and then the rest of everyone else is free to
6 go.

7 If everyone else will please remain seated
8 while the jury exits the courtroom.

9 (The jury was excused.)

10 **THE COURT:** All right. Any motions before we
11 move to the next phase?

12 **MS. FULLWOOD:** At this time, I'd move for a new
13 trial based on all of the objections made and the
14 exceptions taken during the course of this trial.

15 **THE COURT:** All right. I certainly note your
16 motion, Ms. Fullwood. I'm going to respectfully
17 deny that. I think the -- the issues that were
18 raised and the exceptions were things that dealt
19 with matters of facts that was in the province of
20 the jury and I think that the jury -- the verdict
21 that they returned certainly is supported by the
22 evidence in the case. So, Ms. Fullwood, I would
23 respectfully deny your motion. Anything further?

24 Is the State ready to proceed with sentencing?

25 **MR. GRAHAM:** Yes, Your Honor.

1 **THE COURT:** All right. I'll be happy to hear
2 from the State with regards to any issue regarding
3 sentencing.

4 **MR. GRAHAM:** Your Honor, this is Thomas' aunt,
5 Stephanie Delgado.

6 **THE COURT:** All right. Ms. Delgado, I'll be
7 happy to hear from you, ma'am.

8 **MS. DELGADO:** Good afternoon. Thomas was a
9 delight to everyone that knew him. He was a
10 beautiful person. I knew him from infancy up until
11 he passed. He had a lot of goals, a lot of dreams.
12 He graduated high school. He was aspiring to go to
13 college. He held a full-time job, took care of his
14 daughter and his fiancée, and his life was cut
15 short. I certainly hope that the Court gives
16 Mr. Wardlaw the fullest punishment because those
17 dreams were cut way too short. That's all.

18 **THE COURT:** Thank you, ma'am.

19 **MR. GRAHAM:** This is Thomas' fiancée, Shaquana
20 Outing.

21 **MS. OUTING:** Hi, Your Honor. I want to start
22 off by saying that Thomas is my fiancé, but Thomas
23 is also my best friend. I met Thomas in the eighth
24 grade and from there, we built a undiably {sic}
25 history that you may see on movies that normal

1 people don't get. Thomas taught me how to love.
2 Nobody loved me. Thomas gave me a beautiful baby.
3 Without that baby, I probably wouldn't be standing
4 in front of you right now.

5 I ask that you give him the maximum also
6 because he killed my fiancé, but he killed me too.
7 The only reason why I go on is for my daughter. I
8 go to school. I take up two classes, radiology and
9 human services, to make my daughter feel like I'm
10 going to provide the best way that I can for her.

11 I just ask you, Your Honor, to honestly look me
12 in my face and be able to help my family. And
13 T.T.'s not ever coming back, but he did give me a
14 beautiful daughter and he gave me a beautiful
15 family. That's my family now. And that's all I
16 want to say. Thank you.

17 **THE COURT:** Thank you, ma'am.

18 **MR. GRAHAM:** Your Honor, these are Thomas'
19 grandparents. This is Terry and Paula Sneed.

20 **MS. SNEED:** Your Honor, Thomas was my first
21 grandchild, my only grandson for 20 years. We
22 helped raise him. He called me Mawmaw and I called
23 him T.T. During the time we helped raise him, he
24 lived with us, he showed me all the respect in the
25 world. Of course, grandmas are going to brag on

1 their grandkids, but this grandson never cursed in
2 front of me, never raised his voice, nor did he ever
3 raise his hand.

4 He wanted to go to Midlands Tech to get a
5 degree that he could -- he loved to swim. He wanted
6 to be an underwater welder and he was trying his
7 very best. For the last two years, he worked with
8 my husband. I saw him every day. I'm a special
9 needs bus driver for School District 5. Before
10 that, I worked 27 years with the department of
11 mental health. Every day when I come in off my
12 route, I would see my grandson out working with my
13 husband.

14 We're fortunate we have a great-granddaughter
15 and we want to help raise her and let her know what
16 a kind and gentle soul he was with us. And during
17 this time, he -- the reason why he had an apartment
18 was because he worked with my husband. My husband's
19 a maintenance man. Thomas didn't even own a car.
20 He was trying to save up money to get a car and go
21 to school. And when the baby was born, when **T.**
22 was born, he was an excellent father. He tended to
23 that baby. He got up during the night. He fed her.
24 He changed her clothes. He took care of her. He
25 loved her. And he told me, Mawmaw, I'm going to do

1 better for my daughter.

2 And that's what I wanted you to know about my
3 grandson.

4 **THE COURT:** Thank you, ma'am. Thank you for
5 being here.

6 **MR. GRAHAM:** This is Thomas' mother, Angela
7 Ellison.

8 **COURT REPORTER:** What was your last name?

9 **MS. ELLISON:** My last name is Ellison,
10 E-l-l-i-s-o-n. This is Thomas Hoefer, Sr.

11 Your Honor, Thomas' nickname was T.T. I'm
12 T.T.'s mom and this is his dad. Unlike what has
13 been said about him today, I want you to know my son
14 was a high school graduate of Columbia High School.
15 He was a tax payer and worked for American
16 Properties. T.T. was a proud new father. T.T. was
17 our only child. We do not have any other children.
18 Gonzales took my family from us. We will only have
19 one granddaughter.

20 Before December 29th, 2011, we had a normal,
21 average, decent life. We weren't rich, but we had a
22 good life. T.T. was in love and engaged to
23 Shaquana. They had their own apartment. They have
24 a beautiful daughter. And most importantly, my
25 family had love.

1 Because what -- because of what Gonzales has
2 done, Shaquana and my granddaughter live with me.
3 Because of his actions, my granddaughter will never
4 get to know her father. She won't get to know how
5 he loved her and wanted her. I remember the day my
6 granddaughter was born. I never saw T.T. so happy
7 in his entire life.

8 T.T. wasn't satisfied with just a high school
9 diploma. He was inquiring with Midlands Tech and
10 other schools to become an underground welder --
11 underwater welder. T.T. wanted more for Shaquana
12 and T. .

13 Your Honor, Gonzales' family get to see him.
14 They get to talk with him, laugh with him. I will
15 never get to hear T.T.'s silly laugh. I will never
16 get to hear him say, Ma, as only he could. My
17 family and his daughter gets to go to a grave site.
18 We get to talk and cry to dirt and grass and a
19 tombstone. And I'm asking you to please give him
20 the maximum sentence you can. Thank you.

21 **THE COURT:** Thank you.

22 **MR. GRAHAM:** Your Honor, the only other thing
23 is his record. You've heard part of it. He had the
24 juvenile conviction for receiving stolen goods. He
25 has a conviction for public disorderly conduct,

1 giving false information to police, the burglary,
2 the grand larceny and he also had a conviction for
3 unlawful carrying of a weapon.

4 Your Honor has or will read the rap lyrics.
5 And you heard him testify about posting on Facebook
6 that it was killing season and he admitted that he
7 posted it. And I think the lyrics speak to his
8 heart. And it was a coldhearted murder and we ask
9 that you sentence him accordingly.

10 **THE COURT:** Thank you, sir.

11 Ms. Fullwood.

12 **MS. FULLWOOD:** Thank you. Your Honor, you've
13 heard a lot about Mr. Wardlaw's background when he
14 testified at trial. And, of course, you've seen his
15 stepdad testify for the State. And his mom and
16 brother are here today.

17 I will tell you, Your Honor, this: He's always
18 been a very pleasant client to work with. While he
19 maybe has not always agreed with me, he has always
20 been very respectful to me and very focused on
21 working with me and hasn't exhibited anger or some
22 of the things that sometimes you see in this line of
23 work.

24 I do have to say I just think it's a shame when
25 some young people get so seduced by a lifestyle

1 that's portrayed in things like rap lyrics, that
2 they try to live that lifestyle because, I mean,
3 that's why we're here today.

4 The jury has spoken as the verdict said, but I
5 will point out to Your Honor, I think that what
6 happened was something spontaneous that happened,
7 you know. I don't think that there was any
8 preplanning or anything like this. It was a
9 spontaneous thing that happened as a result of a
10 business dispute.

11 I don't know if Ms. Wardlaw or Mr. Wardlaw's
12 brother would like to tell the Court anything.

13 **THE COURT:** If anyone would like to address the
14 Court, I'll be happy to hear from you. You're not
15 required to, but I certainly will be happy to hear
16 from you.

17 **MS. WARDLAW:** My name is Sharon Wardlaw. I'm
18 Gonzales' mother.

19 **THE COURT:** Yes, ma'am.

20 **MS. WARDLAW:** I just want to apologize for my
21 son breaking the law. And I want to let Thomas'
22 family know that I apologize and I'm sorry that they
23 lost their loved one. I'm at a loss here as well,
24 not as severe as they are, but I pray every day that
25 the Lord brings their family healing for that

1 family, as well as my own family. And I just want
2 to apologize. That's really all that I can say at
3 this point. I'm just so sorry that this happened.

4 But I do agree with Ms. Fullwood that this all
5 gets caught up in this music and lifestyle and
6 drugs. And I believe also like she just said, it
7 was spontaneous. But I'm sorry that it happened.
8 There's no excuse for it to happen to anybody and I
9 just want to say that I'm sorry.

10 **THE COURT:** Thank you, Ms. Wardlaw.

11 **MS. FULLWOOD:** The only thing I have to add is
12 any sentence he's going to get is going to be
13 substantial. In light of his youth at the time of
14 the offense, I'd ask Your Honor to consider
15 something that will at least give him some prospect
16 of one day getting out of prison. And he would like
17 to address Your Honor.

18 **THE COURT:** Sure. I'll be more than happy to
19 hear from you, Mr. Wardlaw.

20 **DEFENDANT:** Your Honor, I want to apologize to
21 the victim's family. I want to apologize to my
22 family. You know, like I said, T.T. was a friend
23 for me too, but, you know, I broke the law and I got
24 to face the consequences for it. You know, I'm
25 prepared for it mentally and physically, but I just

1 ask for you to show leniency and mercy on me, sir.

2 **THE COURT:** All right, sir. Thank you, sir.

3 (Pause.)

4 **THE COURT:** Folks, and I don't want to keep you
5 here longer than you need to be here, but this is
6 the part of this job that someone mentioned that the
7 weight of this robe can get very heavy and this is
8 where it gets heavy trying to decide what is
9 appropriate. And the thing that gets me, and I
10 don't know how to -- I don't know how to fix it. I
11 appeal to folks like all of you that are out here.
12 I appeal all the time to you because the only way we
13 fix this is if we get into our neighborhoods and we
14 fix it.

15 And I want to say, you know, this isn't a
16 white, black, Hispanic, Asian, it's not an ethnic
17 thing. It -- because it's prevalent throughout our
18 society in all areas of our lives. And it's not --
19 it's not a racial or ethnic thing. You find it in
20 every single class of folks throughout this country.
21 And it is this prevailing image that young people in
22 the entertainment industry puts out there that is
23 just disturbing and it affects young people in such
24 an adverse way.

25 I'm not -- I love music. I play music. I've

1 been playing music since I was in my early 20s. And
2 there's a lot of rap music out there that I like.
3 The rap music that I despise, though, is the stuff
4 that refers to women as ho's and bitches, that
5 refers to men of color as nigga and that kind of
6 stuff, because that's degrading. So it doesn't
7 matter what the intention is, it's just degrading.
8 It's degrading to a human being. And -- but this is
9 the -- this is what our young people are seeing.
10 And so, again, you know, I go back to saying it's
11 not rap music per se because there's a lot of good
12 rap music out there, but it's this kind of rap music
13 that is deadly and is wrong.

14 And a concern I've got is that on the surface,
15 that this doesn't appear to be cold-blooded, but it
16 is. And I agree with what you said, Ms. Fullwood,
17 and I wasn't there, none of us were there, so I
18 don't know what happened, but I can picture, I can
19 imagine, based on the evidence and the testimony
20 that came out, that this was a reaction to a
21 situation. I don't believe that Mr. Wardlaw went
22 there to kill Mr. Hoefer, but I do believe he went
23 there prepared to if he needed to. And I do believe
24 he went there and when it went bad, when the deal
25 went south, he was okay with just popping him. And

1 that's -- that's where it's cold.

2 And the reason I believe that, on the evidence
3 that has been presented, is in that rap, those
4 lyrics spoke volumes in this case. That is such a
5 cold indifference to life, that it's a little scary.
6 That's giving life no value and not really concerned
7 about the consequences of what you've done.

8 And so, Ms. Wardlaw, my heart goes out to you,
9 as well, obviously, to Mr. Hoefer's family, but you
10 didn't raise your son to be like this, I'm
11 confident. And you apologized earlier and I thank
12 you for that. I appreciate you doing that, but you
13 know what, that's not your place to do it because
14 you didn't do anything wrong here. Your son made a
15 mistake.

16 But I think it's bigger than that. I think
17 it's bigger than he just made a mistake. I think at
18 some point in his young life, and he is a young man,
19 some switch has turned off. He doesn't have
20 compassion or sympathy for people. He all but
21 admitted that he came in here and perjured himself
22 on the stand and made up a bunch of lies to try to
23 get out of it instead of stepping up to the plate
24 and taking responsibility for what he did.

25 And I take all of this into consideration as I

1 try to decide what is appropriate. And I'm just --
2 I'm so torn on what's appropriate here because I've
3 seen more brutal killings, I've seen more violent
4 killings, but I don't know that I've seen a whole
5 lot that are more just cold and, you know, you screw
6 with me, I'll kill you, it's not a problem. I don't
7 know how you deal with that. I don't know how to
8 deal with that.

9 SENTENCE OF THE COURT

10 **THE COURT:** On indictment 2012-GS-32-1261, on
11 the charge of murder, the sentence of the Court is
12 that you be committed to the State Department of
13 Corrections for the remainder of your natural life.
14 Good luck to you, sir.

15 All right. If there isn't any further
16 business, then this court will be adjourned, sine
17 die.

18
19 END OF PROCEEDINGS
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 10th - 11th & 14th of February, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 14, 2014



Stacy L. Sheppard, RPR
Circuit Court Reporter

WITNESSES

Columbia Police Department

K E Reese

Law Enforcement Case #:

DSG

ARREST WARRANT NUMBER

K690621

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 6-4-2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS3201261

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2012

THE STATE
vs.

Gonzales R Wardlaw

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

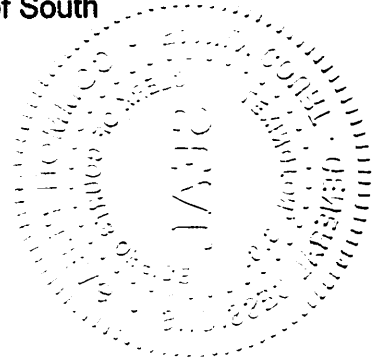
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on June 2012, the Grand Jurors of Lexington County present upon their oath:

That **Gonzales R Wardlaw** did in Lexington County on or about December 29, 2011, did willfully and unlawfully kill one Thomas Hoefer with malice aforethought, either express or implied by means of shooting the victim in the chest and that the victim died as a proximate result thereof, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Gonzales R Wardlaw
 AKA: _____
 Race: Black Sex: M Age: 22
 DOB: 1992 SS#: _____
 Address: No Perm Address
 City, State, Zip: Columbia, SC
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Solicitor _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life w/o Parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____
 Recipient: _____

*Fine: _____ \$
 § 14-1-206 (Assessments 107.5 %) _____ \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$
 TOTAL

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge
 Judge Code: 2141
 Sentence Date: 2-14-2014

Clerk of Court/ Deputy Clerk

Court Reporter: S. Shepard

SCCA/217 (03/2011)

Lex. Co. C.C.C.P., G.S. & F.C.



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JAN 16 2015

SC Court of App

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GONZALES R. WARDLAW,

APPELLANT

APPELLATE CASE NO. 2014-000343

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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JAN 16 2015

SC OFFICE OF
APPELLATE DEFENSE

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing the solicitor to make a “golden rule” argument when he asked the jury, “Is this a proper thing to happen in our county?” and telling the jury, “You speak for the people, the community?”

STATEMENT OF THE CASE

During its June 2012, term, a Lexington County grand jury indicted appellant for murder. R. 426-27. On February 10, 2014, appellant was tried before the Honorable Thomas A. Russo, Sr., and a jury. R. 1. Samuel R. Hubbard, III, and David Shawn Graham represented the State. R. 1. Elizabeth C. Fullwood represented appellant. R. 1. The jury convicted appellant. R. 410, ll. 1 – 10. Judge Russo sentenced appellant to life imprisonment. R. 424, ll. 9 – 14. This appeal follows.

ARGUMENT

The trial court erred in allowing the solicitor to make a “golden rule” argument when he asked the jury, “Is this a proper thing to happen in our county?” and telling the jury, “You speak for the people, the community.”

Appellant testified in his own defense. Appellant and the decedent were friends. R. 309, ll. 12 – 13. Appellant had purchased marijuana from the decedent “a couple times.” R. 308, l. 21 – 309, l. 4. On the night of the shooting, appellant called the decedent to arrange a marijuana purchase. R. 310, ll. 12 – 17. Appellant was going to purchase 2 ½ ounces of marijuana, with half an ounce of the purchase consisting of “kush,” which is a more potent and expensive variant of the plant. R. 310, ll. 12 – 23. The decedent was farther up the marijuana distribution chain than appellant and was appellant’s supplier. R. 311, ll. 7 – 12.

Appellant traveled to the Olive Garden restaurant on Harbison Boulevard to meet the decedent. R. 311, ll. 13 – 19. Appellant did not take a weapon. R. 312, ll. 13 – 14. The decedent gave appellant marijuana, but the weight was less than requested and also contained no kush. R. 312, l. 15 – 313, l. 8. Appellant said he did not want it. R. 313, ll. 9 – 10. The decedent told appellant, “No, these your drugs now. I just want my money.” R. 313, ll. 11 – 14. Appellant again attempted to reject the purchase, but the decedent, “pulled out a gun on [appellant] and said, ‘Nigger, I’ll kill your ass.’” R. 313, ll. 15 – 20.

Appellant was afraid for his life. R. 313, ll. 21 – 22. He knew the decedent was about to shoot and kill him. R. 313, ll. 21 – 24. Appellant knew if he ran, the decedent would shoot him in the back. R. 314, ll. 2 – 6. Appellant “reached for the gun to try to

wrestle it away from” the decedent. R. 314, ll. 7 – 11. During the struggle, the “gun just went off.” R. 314, ll. 20 – 24.

Appellant was afraid. R. 315, ll. 19 – 24. He said, “I never been into nothing like that before my life. I just was acting off instinct, and I was just, just pick the stuff up and go and get out of there.” R. 315, ll. 19 – 24. He ran. R. 316, ll. 1 – 5. He threw the gun in the Broad River. R. 316, l. 10 – 317, l. 3.

The forensic evidence showed that the decedent died from a gunshot wound to the chest. R. 195, l. 23 – 196, l. 5. R. 198, ll. 7 – 10. The State’s case largely rested on two pieces of evidence. The first was the testimony from appellant’s stepfather, Lindsey Glover (“Glover”). R. 257, ll. 11 – 13. After the shooting, appellant called Glover and asked him for help getting a motel room for the night because he had a girl with him. R. 260, l. 3 – 261, l. 22. Glover claimed that appellant told him that when he went to purchase marijuana from the decedent, they exchanged words, “so he pulled it out. He said when he pulled it out, [the decedent] reached for it and it went off.” R. 268, ll. 20 – 25. Glover claimed that when he asked appellant why he shot the decedent, appellant replied, “He wasn’t going to let him take nothing from him.” R. 270, ll. 1 – 3. Appellant’s testimony contradicted his stepfather’s version, pointing out that Glover was half-asleep and “didn’t quite hear everything” appellant was saying. R. 319, ll. 14 – 21.

The State’s other piece of evidence was rap lyrics written by appellant. R. 320, ll. 20 – 22. R. 251, ll. 6 – 252, l. 13. On cross-examination, the solicitor attempted to make it seem that the lyrics admitted that appellant had meant to shoot the decedent and bragged about it. R. 346, l. 25 – 358, l. 20. Appellant strenuously rejected the solicitor’s interpretation of his lyrics. R. 346, l. 25 – 358, l. 20. Appellant explained that

the lyrics were just his way of “processing everything that was going on.” R. 347, ll. 2 – 7. Appellant apologized for the vulgarity of the lyrics and admitted that he “should have found a better way to express myself,” but never agreed with the solicitor that the lyrics described the actual circumstances of the shooting. R. 320, l. 20 – 321, l. 5. R. 346, l. 25 – 358, l. 20.

The solicitor made the following closing argument which drew an objection and subsequent ruling from the trial judge:

And, folks, I’m not here to justify selling drugs. It’s wrong. You aren’t here to judge the victim either, though. Who the victim is ultimately doesn’t matter for you. **Your verdict speaks about us. Is this a proper thing to happen in our county?**

MS. FULLWOOD: Objection, Your Honor, Golden rule.

MR. HUBBARD: Absolutely not.

(Whereupon, a bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Overruled.

MR. HUBBARD: Y’all aren’t here to punish anybody, have mercy on anybody. You aren’t here to judge anybody, but determine the facts. And a verdict is a verdict regardless of who a victim is, regardless of who’s out there in this courtroom right now. **You speak for the people, the community.**

R. 382, l. 18 – 383, l. 10.

Solicitors may not argue that the jury must speak for the community against criminal activity. Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010). The State invited the jurors to take sides against criminals as a whole and the argument was not addressed to the evidence in appellant’s case. A solicitor’s argument is bound by rules of fairness and may not be calculated to arouse a juror’s passions or prejudice. Id. at 458, 698 S.E.2d at 566;

State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). State v. White, 246 S.C. 502, 144 S.E.2d 481 (1965). A solicitor cannot inject material outside of the evidence or the judge's charge, but must confine himself to the record in the case presented to the jury. See Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) ("The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence."); State v. Copeland, 321 S.C. 318, 486 S.E.2d 620 (1996); State v. McAlister, 133 S.C. 99, 130 S.E. 511 (1925) (holding it is improper in closing argument for the State to refer to and comment about facts of other cases to indicate or suggest the same results).

In White, the solicitor told the jury, "Let him go, let him come back to Williamsburg County. Let him come in your wife's bedroom or your mother or daughters, any of them, what would you do?" White at 504, 144 S.E.2d at 482. The Court reversed, holding that the effect of such an argument is to "completely destroy and nullify all sense of impartiality in a case of this kind." Id. at 506, 144 S.E.2d at 482.

The solicitor's comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974). This determination requires the Court to look to "the nature of the comments, the nature and quantum of the evidence before the jury, the arguments of opposing counsel, the judge's charge, and whether the errors were isolated or repeated." Bennett v. Angelone, 92 F.3d 1336, 1345–46 (4th Cir. 1996) (internal quotation marks omitted).

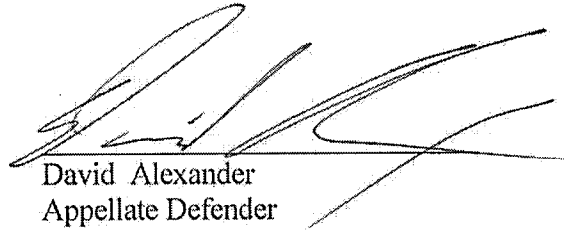
The State had last argument. These comments were error and the trial judge overruled appellant's objection; therefore, no curative instruction was given to disregard the inflammatory argument. The solicitor did not just make an isolated remark, but immediately

capitalized on the judge's erroneous ruling and again told the jury that they "speak for the people, the community." R. 383, ll. 5 – 10. In this case where the defendant testified the shooting was in self-defense, the prejudice from the solicitor's golden rule argument likely made the difference between conviction and acquittal. This Court should reverse and grant appellant a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse and grant appellant a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized with long, sweeping strokes.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of January, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GONZALES R. WARDLAW,

APPELLANT

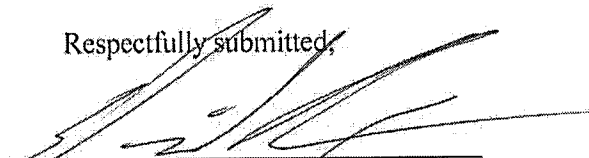
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gonzales R. Wardlaw states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Thomas A. Russo, which was held on February 14, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Gonzales R. Wardlaw.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of January, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

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 JAN 16 2015
 SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GONZALES R. WARDLAW,

APPELLANT

**DESIGNATION OF MATTER TO BE
 INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 16th, 2015



David Alexander
 Appellate Defender

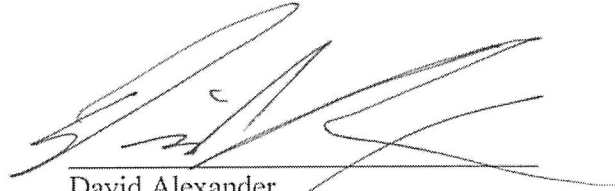
South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589
 (803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 16, 2015



David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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JAN 16 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

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JAN 16 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

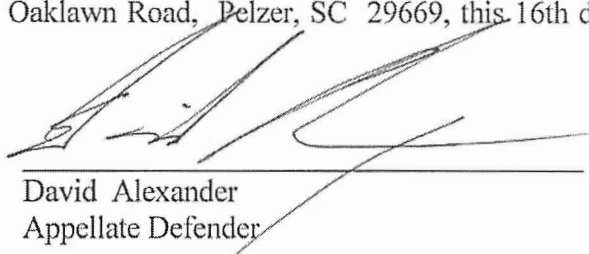
V.

GONZALES R. WARDLAW,

APPELLANT

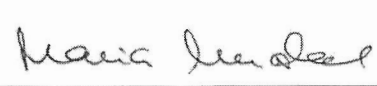
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Gonzales R. Wardlaw, #343782 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 16th day of January, 2015.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of January, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Gonzales R. Wardlaw, Appellant.

Appellate Case No. 2014-000343

Appeal From Lexington County
Thomas A. Russo, Circuit Court Judge

Unpublished Opinion No. 2015-UP-296
Submitted June 1, 2015 – Filed June 17, 2015

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

ORIGINAL

FORM 5-FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Full name and prison number (if any) of Applicant.

Gonzales Wardlaw # 343782
v.

State of South Carolina

2015 AUG 25 AM 8:56

IN THE COURT OF COMMON PLEAS

J.M.
J. TH. A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2015 CP 3202990

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

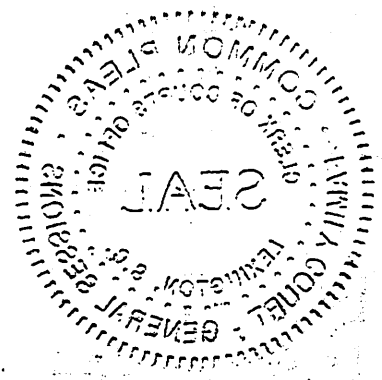
Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee C. I., 990 Wisacny Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 305 East Main Street, Lexington, S.C. 29072
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 12-25-32-1261 / Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2/11/2014 / Life
 - (b) _____

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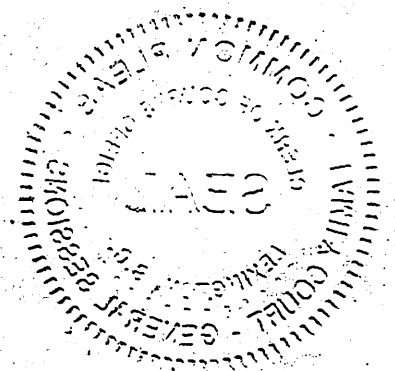
ORIGINAL

- (c) _____
6. Check whether a finding of guilty was made: 2015 AUG 25 AM 8 56
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) I
- (c) ↓
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

ETHA A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

2015 CP 3202990

2015828



ORIGINAL

- (a) Ineffective Assistance of Counsel, Violation of
 (b) Sixth Amendment U.S. Constitution
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attached Page 3(a)
 (b) See Attached Page 3(a)
 (c) _____

2015 CP 3202990

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. +
 iii. +
 iv. +

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. +
 iii. +
 iv. +

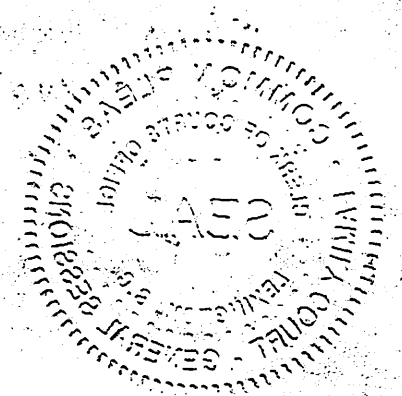
(c) the disposition thereof:

- i. N/A
 ii. +
 iii. +

FILED
 2015 AUG 25 AM 8 56
 JILL A. CARRIG
 CLERK OF COURT
 EXETER, NH

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 Lex. Co. C.C.C.P., G.S. & F.C.

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PAGE 3(a).

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

The Applicant alleges he was denied his Sixth(6th) Amendment United States Constitution right to effective assistance of counsel when his trial attorney failed to present evidence that showed it was a struggle between Applicant and Victim that resulted in the Victim being shot; and for failing to adequately inform Applicant of the ramifications he faced when advising him to waive a Manslaughter charge of law to the jury.

The facts and circumstances of this case clearly shows the elements for a Manslaughter charge of law was warranted. At trial, Applicant testified the Victim was his supplier and he met him to purchase marijuana that he intended to sell for profit. Tr. pg. 308 line 21- pg. 311 line 11. However, after the Victim placed the drugs in Applicant's hand; he viewed it and noticed the quantity was not enough for the money he was being charged so he attempted to give it back stating "he wasn't going to buy it." Tr. pg. 311 line 12- pg. 313 line 10. The Victim then became enraged and pulled a gun on Applicant and told him he was going to give him the money or he (Victim) was going to kill Applicant. Tr. pg. 313 lines 10-20. Applicant testified he feared for his life so he grabbed the gun and began to wrestle with the Victim; and that caused the gun to discharge, hitting the Victim. Tr. pg. 313 line 22- pg. 314 line 24. Several witnesses observed the altercation between Applicant and Victim. See: Investigative Report of Inv.

K.E. Reese, pg. 9 of 21. (LE Case # 110038065)

ON SCENE WITNESSES:

Anna [REDACTED] states that she observed the victim and a b/m who was wearing a hooded sweatshirt w/ the hood over his head engaged in what she thought was an altercation with pushing and shoving. She then heard a shot and saw the victim run toward the front of the restaurant saying he had been shot. She said the other subject ran in the other direction. Brown said that at that time a dark sedan drove quickly pass the front of the business. (See: Statement).

Justin [REDACTED] was with witness Brown at the restaurant. He states he saw two b/ms engaged in what appeared to be a physical altercation. They were shoving each other. Afterwards he heard a gun shot and saw the victim running toward the sidewalk saying he was shot. He observed the other subject running through the parking lot. He was wearing a dark hooded sweatshirt and jeans.

Darius [REDACTED] is an employee at the Olive Garden. A formal statement was not taken from him at the time of the incident. However, he gave a verbal statement to Inv. Reese with the expectation of being contacted at a later date. Mitchell stated that he was dumping trash on the outside when he saw a light skin male run from the parking lot toward the "Baby R Us" store across an adjacent parking lot. He said the subject got into a silver Jeep Grand Cherokee (passenger side) and sped out of the parking lot.

Richland County Sheriff's Deputy Stone and CPD officer Eric walker pulled over silver Jeep Grand Cherokee in the Broad River Rd. area. It was driven by Jasmine Evins and also occupied by her friend Clauthia Davis. The vehicle was stopped because it matched the description of the possible suspect vehicle. The information was turned over to Investigators for follow-up.

Inv. John VanOuten dumped the victim's cell home. The information revealed that the last several communications the victim had leading up to the shooting was from his cell phone to cell number 803-363-7542. It is unknown at this time the identity of the person with whom the victim spoke. A search warrant was secured for the number.

12-30-11; Inv. Mark Vinson ran the target number through the ASGDC Pay-Tell phone call system. It showed that at least one call was made from the jail to the target number on December 19, 2011 by someone calling him "Moo Moo". The person answering the target phone identified himself to the caller as "Snoop" and offered to help the call make contact with somebody. This is an indication of what may be the caller's street name. The call was recorded and placed in the case file.

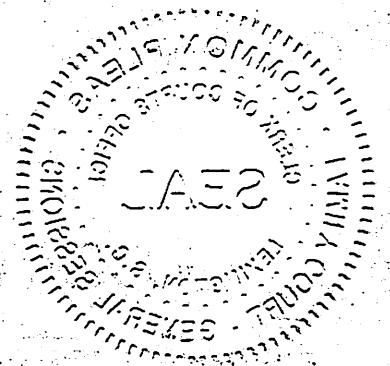
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Lex. Co. C.C.C.R., G.S. & F.C.

14 of 21 03/14/2012

LE Case #110038065

2015828



Inv. K. E. Reese
Columbia Police Department
December 29th, 2011

Summary of Harbison Homicide

- Dec. 29, 2011, about 21:00hrs. a shooting occurred at 247 Habison Blvd.
- Victim Thomas Hoefer had received a couple of cell phone calls prior to the shooting and was talking with someone and giving the person directions to his location. He had been at the Olive Garden restaurant to celebrate his girlfriend's mother's birthday.
- Victim's girlfriend, Shaquana Outing, stated the victim was standing outside of the car when he told her he was going to the other side of the parking lot to speak to his "Homeboy". Within 3-5 minutes she heard a shot at which time the victim came back to the car saying he'd been shot. Outing immediately called 911. Officers arrived on the scene within minutes and determined the victim to have what appeared to be a gunshot wound to the chest. Paramedics arrived and transported the victim to a local hospital.
- CSI recovered at least 16 unspent 22.cal bullets spent 22. Cal shell casing. The victim's cell phone was also recovered. CSI also recovered and seized the victim's cell phone at the scene.
- * Several witnesses reported seeing the victim in what appeared to be a physical altercation with another b/m subject moments before the shooting. They described the other person as a b/m, light skinned and small in stature. One witness reports seeing the suspect run across the parking lot and get in the passenger side of silver colored Jeep Grand Cherokee.
- The victim died at the Lexington Medical Center.
- Richland County Sheriff's Deputy Stone and CPD officer Eric walker pulled over silver Jeep Grand Cherokee in the Broad River Rd. area. The vehicle was stopped because it matched the description of the possible suspect vehicle.
- Victim's cell phone was dumped and revealed the last number to communicate with him was 803- [REDACTED] This number becomes the target number to investigate.
- Inv. M. Vinson ran the target number through the ASGDC Pay-Tell system. It revealed that on Dec. 19, 2011, someone called this number from the jail facility. The person answering the phone identified himself as "Snoop".

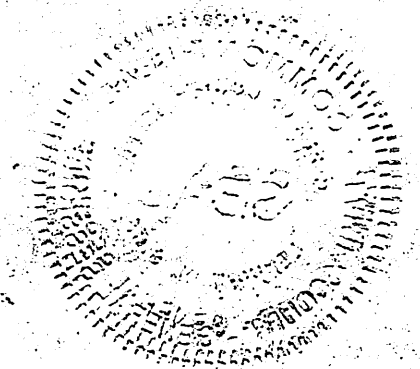
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Lex. Co. C.C.C.R., G.S. & F.C.

9 of 21 03/14/2012

LE Case #110038065

2015828



INEFFECTIVE ASSISTANCE OF COUNSEL

Trial counsel was ineffective for failing to subpoena the three witnesses to court that gave written and verbal statements saying the observed Applicant and the Victim engaged in a pushing and shoving match that resulted in Victim getting shot. **See: Investigative Report of Inv. K.E. Reese pg. 14 of 21 (LE Case #110038065)** The three witnesses testimony would have corroborated Applicant's version of events pertaining to what happened that night. More importantly, the testimony of the three witnesses would have showed Applicant was telling the truth, because he had no way of knowing the witnesses gave statements saying they observed an altercation prior to giving his statement saying the exact same thing happened. Coupled with Applicant's testimony, the testimony of the witnesses would have negated the Murder offense because it would have showed the incident was not a deliberate and calculated act. ("Murder" is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10) Furthermore, the testimony evidence would have presented viable grounds for a lesser included charge of Manslaughter to be given to the jury. ("Manslaughter" is the unlawful killing of another without malice, express or implied. S.C. Code Ann. §16-3-50)

PREJUDICE

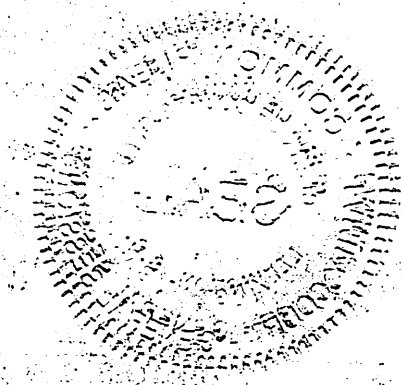
Applicant was prejudiced by his trial attorney error insofar as, the testimony would have revealed Applicant was not guilty of deliberately killing the Victim -as was argued by the State-, and would have opened the door for the lesser included charge of Manslaughter to be presented to the jury as an optional verdict the jury could reach. (In State v. King, 158 S.C. 251, 155 S.E. 409

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Page 2 of 4.

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2015828



(1930), the Court held that a jury charge was incorrect in that it did not clearly and correctly instruct the jury that, if they had a reasonable doubt as to whether the defendant was guilty of murder or manslaughter, it was their duty to resolve that doubt in his favor, and find him guilty of the lesser offense. The Court also held that a defendant who 'requests' a King charge is entitled to an appropriate jury instruction. State v. Robinson, --S.C.--, 414 S.E.2d 142 (1992)) A finding of guilt for Manslaughter by the jury would have subjected Applicant to a minimum of two(2) years and a maximum of thirty(30) years; while he faced a minimum of thirty(30) years and a maximum of Life for the Murder offense. Because the jury was not presented with the Manslaughter charge of law, Applicant was found guilty of Murder and sentenced to Life in prison without the possibility of parole.

Additionally, counsel was ineffective for giving Applicant bad advise that led to him waiving a Manslaughter charge of law to the jury. Tr. pg. 362 line 6- pg. 363 line 8. The waiver by Applicant must not be held to be voluntarily and intelligent. To begin, counsel was acting as Applicant's advocate against the charges the State prosecuted him, and it was counsel's duty to render the best representation he could provide to ensure the best outcome for Applicant. Competent counsel would have diligently pursued a Manslaughter conviction given the facts and circumstances of this case. However, Applicant's attorney erroneously advised him to waive the lesser included charge that would have benefitted him in receiving a lesser sentence. Furthermore, it is shown from the record that Applicant has minimum education Tr. pg. 76 line 15- pg. 77 line 22; pg. 307 line 4- pg. 308 line 3., which makes it

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Page 3 of 4.

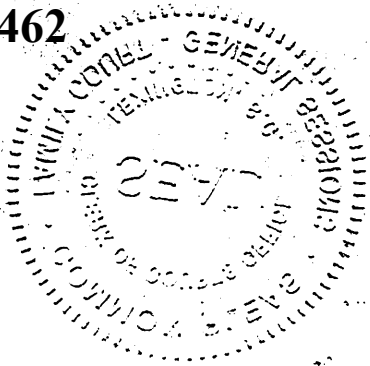
Lex. Co. C.C.C.R., G.S. & F.C.

clear he relied strongly on the advise provided to him by counsel. Had counsel informed him of the ramifications he faced when ommitting the lesser charge of law to the jury, he would not had waived it. Even more so, had counsel informed him it would have been in his best interest to request the lesser included charge of law, he would have asked the court to give the instruction to the jury when he was addressed by the judge.

CONCLUSION

Trial counsel was ineffective for failing to present evidence that corroborated Applicant's version of events and supported a lesser included charge; and for erroneously advising him to waive a Manslaughter charge of law to the jury. Counsel's deficient performance had a detrimental effect on the outcome of Applicant's trial proceeding to the extent that effected the amount of time he received. Applicant requests that the court will vacate his conviction and remand his case for a new trial.

s/ *Gonzales Wardlaw*
Gonzales Wardlaw #343782



FILE 7

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ARTHUR A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2015 CP 3202990

iv. _____

(d) the date of each such disposition:

i. N/P

ii. +

iii. +

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. +

iii. +

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NA

ii. +

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. +

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel is not cognizable on

(b) Direct Appeal. Such claims must be raised on PCR.

(c) _____

17. Were you represented by an attorney at any time during the course of:

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2015 CP 3202990 ORIGINAL

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2015 AUG 25 AM 8 57

KATH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

- (a) your arraignment and plea? NA
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- Elizabeth C. Fullwood/Lexington Public Defender Office 407 1/2 W. Main St.
Lexington, S.C. 29072
 - David Alexander/ P.O. Box 11589, Columbia, S.C. 29211
 - _____
- (b) the proceedings at which each such attorney represented you:
- Ms. Fullwood represented me at trial.
 - Mr. Alexander represented me on Direct Appeal
 - _____

19. State clearly the relief you seek in filing this application:

Vacate Conviction and Demand for New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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2015 CP 3202990 ORIGINAL

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 19th
day of August, 2015.

[Signature] (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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2015 AUG 25 AM 8 57
JIM A. CARRIGG
CLERK OF COURT
LEXINGTON SC

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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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2015CP3202990

ORIGINAL

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James Wardlaw
Applicant

SWORN or affirmed to and subscribed before me this
19th day of August, 2015.

Nancy C. Murchant
Notary Public

My Commission Expires: 1-23-2023 PL (1-23-2023)

ESTH A. CARRIOG
CLERK OF COURT
LEXINGTON SC

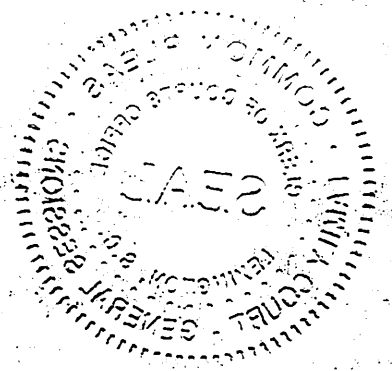
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FILE

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[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

2015828



470

15-2990
I Gonzales Wardlaw filed a PCR application and received a Copy of the filed application. I'm still waiting to find out Who will be my appointed attorney. In the mean time I Would like to amend these following arguments to my already filed application. I also would like to file a motion For funds for Investigative and expert Services.

ORIGINAL
KPK

FILED
2015 SEP 29 AM 11:52
BETH A. CARRIG
CLERK OF COURT
LEXINGTON, VA

RECEIVED
JUL 06 2020
APPELLATE DEFENSE



ORIGINAL

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)
 Gonzales R. Wardlaw)
 SCDC NO. 343782)
 Applicant,)
 v.)
 The State)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR LEXINGTON COUNTY

MEMORANDUM OF LAW
 IN SUPPORT OF APPLICATION
 FOR POST CONVICTION
 RELIEF

15-2990

COME Now, the applicant, above, named, Presents
 his memorandum of Law in support of his PCR Appli-
 cation and would show the following unto the
 Honorable Court.

DETH A. CARRIG
 CLERK OF COURT
 LEXINGTON SC

2015 SEP 29 AM 11:52

FILED

STATEMENT OF THE CASE

The applicant was indicted by the Lexington County
 Of General Sessions Court. He was represented by
 Elizabeth C. Fullwood, Assistant Public Defender, and
 the State was represented by Samuel R. Hubbard, III,
 and David Shawn Graham- Deputy Solicitors. on February
 10-14, 2014, the applicant went to trial before the Hono-
 rable Thomas A. Russo, Sr., Judge and Jury. The
 Jury found him Guilty of murder, and Judge Russo
 Sentenced him to life in prison. A timely appeal
 was filed on applicant's behalf.

The applicant was represented on appeal by
 David Alexander of the S.C. Office of appellate Defense.
 The appeal was Dismissed, unpublished opinion NO.
 2015-UP-296, Submitted June 1, 2015 - Filed June 17, 2015.

ARGUMENT

The applicant was denied the right to effective assistance of trial counsel by Counsel's failure to move for suppression of "Rap lyrics" seized in violation of Fourth Amendment requirements of a search incident to an arrest.

When an applicant claims that Counsel was ineffective by failing to properly litigate a suppression motion, he must show that such a claim is meritorious and that outcome of proceeding would have been different absent evidence that should have been suppressed. See, e.g., *Gallman v. State*, 414 S.E. 2d 780 (S.C. 1992). accord *Kimmelman v. Morrison*, 106 S.Ct. 2774 (1986)

In this case, the applicant was arrested by Columbia Police officers on "Probation violation warrants" while he was walking across a parking lot. Tr. P. 59, L. 16-17. There was no warrants pending against him for any "murder" or any other offense at the time of his arrest. Tr. P. 60. Nevertheless, after the applicant had been taken to the police station, the police went to the apartment complex where the applicant was residing with a female friend named Ce'Kia Bolton to conduct a search of the apartment as an "incident to applicant's arrest for the Probation violation." once ms. Bolton came to the door, the police ordered her to step outside of her apartment." Tr. P. 231, L. 20-22.

After ms. Bolton complied with the police's order to exit her apartment, the police the allegedly asked her if they could search her apartment. As a threshold matter, it should be judicially noted that there was no testimony proffered by the state that ms. Bolton

Ever actually consented to the search of her apartment, also **473**
the applicant's counsel failed to cross-examine ms. Bolton on whether
she did, in fact, sign a "Consent form" authorizing the search of
her apartment.¹

Notwithstanding, when conducting, incident to a lawful
custodial arrest, a full search of arrestee's person for both
weapons and evidence is permitted. U.S. v. Robinson 414 U.S.
218, 235 (1973). In addition, "police may search containers and
other items or areas within the arrestee's immediate reach
or control". See Chimel v. California, 395 U.S. 752, 763 (1969);
Amend. 4. The Chimel court went on to construe "immediate
control by arrestee to mean the area from which the
arrestee might gain possession of a weapon or destroy
evidents". The court finally held that the police may not
conduct a full blown search of entire house under "incident
to arrest exception". 395 U.S. 752, 763

Here, in applicant's case, the police conducted an illegal
search of his residence after his arrest and after he had
been transported ~~to~~ the police station and found "Rap lyrics"
that he had written allegedly connected him to a
murder offense in Lexington County. During his trial,
the solicitor utilized the "Rap lyrics" in his case in chief
to obtain the applicant's murder conviction. The applicant
finally contends that his trial counsel's failure to move
for suppression of the state's seizure and employment of
"Rap lyrics"

1. Note; The state did not provide the defense with any
discovery of the consent form "allegedly signed by ms. Bolton

that were obtained as a result of an illegal search of his residence incidental to his probation violation arrest was ineffective assistance of Counsel that was extremely prejudicial as there was reasonable probability of a different trial result absent the "rap lyrics" that were employed by the solicitor to refute his "self-defense, accident and manslaughter defenses" to his murder offense".²

². See, e.g., *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (barring use in state court of evidence seized in violation of Fourth Amendment).

The applicant was denied the right to effective assistance of trial counsel by Counsel's failure to object to Solicitor's failure to disclose exculpatory evidence upon request by the defense.

During the trial, the solicitor introduced testimony by Officer Brian Zwolak that after he arrested the applicant in a parking lot on probation violation warrants he went to applicant's apartment that he shared with a female friend named Ce'kia Bolton and requested consent to search her residence. He further testified that ms. Bolton "Consented to the search and signed a consent form to authorize the search". Tr. P. 232 L. 9-12. Officer Zwolak further testified that during his search of the residence he found "Rap lyrics" written by the applicant that connected him to a murder in Lexington County that he was investigating". Tr. P. 235, L. 9-12.³

Consequently prior to applicant's trial, the solicitor failed to provide the defense any evidence of the "Consent form" allegedly signed by ms. Bolton to authorize the search of her and applicant's residence pursuant a Rule 5, SCAC, and ~~app~~ Brady⁴ request by the defense. As a result, the applicant submits that the State denied him discovery of exculpatory evidence for use in his defense to impeach Officer Zwolak's testimony regarding the existence of a consent form signed by ms. Bolton authorizing the search of her apartment.

In conjunction, the court has held that exculpatory evidence applies to both material going to the heart of the defendant's guilt or innocence and to material that that might well alter the jury's judgment of credibility

of a Criminal Prosecution Witness. See *Giglio v. U.S.*, 405 U.S. 150, 154 (Note 73) holding that exculpatory evidence "applies to both material going to the heart of defendant's Guilt or innocence and to material that might well alter the Jury's Judgment of the Credibility of a Criminal Prosecution Witness"). See also *Seller v. Estelle*, 651 F.2d 1074 (5th Cir. 1981) (holding that disclosure of FBI Records would have allowed defense Counsel to develop "kidnap theory" was exculpatory).

Likewise in applicants case, the disclosure that no "Signed Consent form" to authorize the Search and Seizure of the "Rap lyrics" Written by the applicant could have altered the Jury's assessments of Officer Zwolak's credibility and that testimony by ~~Zwolak~~ to contray was exculpatory since the absence of the rap lyrics could have created a reasonable doubt in the Jury's mind regarding his Guilt of the States murder Charge against him. See *State v. Forney*, 468 S.E.2d 641 (S.C. 1996) (defining exculpatory evidence as that which is capable of raising a reasonable doubt in the Jury's mind about defendant's Guilt.); See also Rule 804 (b)(3). SCRE.

3. Officer Zwolak clearly admitted that his Search of applicants residence was based on a Search for evidence regarding a murder in Lexington County that he was investigating, which had nothing to do with applicants Probation Violation arrest!!

4. - *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963)

The applicant was denied the right to effective assistance of trial Counsel by Counsel's failure to object to Police Officer's retrieval of information from his cell phone without a Search Warrant.

The State introduced testimony by officer Van Houten, who was not an expert and who extracted information from applicants Cell Phone without a Search Warrant. Tr. P. 205, 207, 209, 210. These Searches of applicants phone were illegal because he had a reasonable expectation of privacy in personal Cell phone because it contained private information. See U.S. v. Zavala, 541 F.3d 562, 577 (5th Cir. 2008).

The applicant thus contends that he was denied the right to effective assistance of trial Counsel by Counsel's failure to object to officer van Houten's retrieval of information from his cell phone without a Search Warrant authorizing the Search.

The applicant was denied the right to effective assistance of trial Counsel by Counsel's failure to object Solicitors failure to provide the defense any copy of the Search Warrant authorizing PTA-FLA (Clear talk) service to extract information from his Cell Phone.

During direct examination of Charles Seizemore an employee of PTA-FLA (Clear talk). Mr. Seizemore testified that Pursuant to a Search Warrant he was able to find records dealing with applicants Cell Phone (803-7542) and supply those records to law enforcements.

Moreover, Mr. Seizemore testified regarding calls between the applicants and murder victim and the time line of those calls on the date of the victims Homicide (12/29/11). The applicant submits that in the absence of any "search warrant" authorizing information regarding his cell phone calls, his Counsel was ineffective for failing to object to introduction of any information extracted from his phone, and Counsel failure to do so was Per Se Prejudicial.

The applicant was denied the right to effective assistance of Counsel by Counsel's failure to object to the Judge's erroneous and incomplete Jury Charge on the ~~inference~~ inference of malice.

In applicant's case, the trial Judge's Jury Charge omitted the following language regarding its Charge on the inference of malice: Tr. P. 397-398

"Even if facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be considered by you (the Jury) along with the other evidence in the case and you may give it the weight that you decide it should receive."

The applicant contends that in view of the fact that he also presented evidence of self-defense and involuntary manslaughter the omission of the above qualifying language in the Judge's instruction was clearly erroneous and prejudicial and warranted an objection from Counsel along with request for the inclusion of the above instructional language of malice.

When case has been submitted on erroneous Jury instructions, prejudicial to the defendant, Judgment should be reversed. See State v. Ramsey, 436 S.E. 2d 511 (S.C. 1993)

Conclusion

Wherefore, for the foregoing reasons, the Honorable Court should reverse applicant's conviction for a new trial.

This _____ day of _____

Gonzales R. Wardlaw
SCDC NO. 343782
Perry Correctional Inst.
430 Oak Lawn Rd - D-Y-11
Pelzer, S.C. 29564

FILED

2015 SEP 29 AM 11:53

STELLA CARRIGG
CLERK OF COURT
GREENINGTON SC

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF <u>Lexington</u>	)	
	)	
Full name and prison number (if any) of Applicant.	)	
<u>Gonzalez Wardlaw # 343782</u>	)	
v.	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee C I, 990 Wisachy Highway, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 205 East Main Street, Lexington, S.C. 29072
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 12-65-32-1261 / Murder

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 3/11/2014 / Life

(b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
-
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) ↓
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel, Violation of
 (b) Sixth Amendment U.S. Constitution
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a)
 (b) See Attached Page 3(a)
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
 ii.
 iii.
 iv.
- (b) the name and location of the Court in which each was filed:
- i. N/A
 ii.
 iii.
 iv.
- (c) the disposition thereof:
- i. N/A
 ii.
 iii.

PAGE 3(a).

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

The Applicant alleges he was denied his Sixth(6th) Amendment United States Constitution right to effective assistance of counsel when his trial attorney failed to present evidence that showed it was a struggle between Applicant and Victim that resulted in the Victim being shot; and for failing to adequately inform Applicant of the ramifications he faced when advising him to waive a Manslaughter charge of law to the jury.

The facts and circumstances of this case clearly shows the elements for a Manslaughter charge of law was warranted. At trial, Applicant testified the Victim was his supplier and he met him to purchase marijuana that he intended to sell for profit. Tr. pg. 308 line 21- pg. 311 line 11. However, after the Victim placed the drugs in Applicant's hand; he viewed it and noticed the quantity was not enough for the money he was being charged so he attempted to give it back stating "he wasn't going to buy it." Tr. pg. 311 line 12- pg. 313 line 10. The Victim then became enraged and pulled a gun on Applicant and told him he was going to give him the money or he (Victim) was going to kill Applicant. Tr. pg. 313 lines 10-20. Applicant testified he feared for his life so he grabbed the gun and began to wrestle with the Victim; and that caused the gun to discharge, hitting the Victim. Tr. pg. 313 line 22- pg. 314 line 24. Several witnesses observed the altercation between Applicant and Victim. See: Investigative Report of Inv. K.E. Reese, pg. 9 of 21. (LE Case # 110038065)

INEFFECTIVE ASSISTANCE OF COUNSEL

Trial counsel was ineffective for failing to subpoena the three witnesses to court that gave written and verbal statements saying the observed Applicant and the Victim engaged in a pushing and shoving match that resulted in Victim getting shot. See: Investigative Report of Inv. K.E. Reese pg. 14 of 21 (LE Case #110038065) The three witnesses testimony would have corroborated Applicant's version of events pertaining to what happened that night. More importantly, the testimony of the three witnesses would have showed Applicant was telling the truth, because he had no way of knowing the witnesses gave statements saying they observed an altercation prior to giving his statement saying the exact same thing happened. Coupled with Applicant's testimony, the testimony of the witnesses would have negated the Murder offense because it would have showed the incident was not a deliberate and calculated act. ("Murder" is the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. §16-3-10) Furthermore, the testimony evidence would have presented viable grounds for a lesser included charge of Manslaughter to be given to the jury. ("Manslaughter" is the unlawful killing of another without malice, express or implied. S.C. Code Ann. §16-3-50)

PREJUDICE

Applicant was prejudiced by his trial attorney error insofar as, the testimony would have revealed Applicant was not guilty of deliberately killing the Victim -as was argued by the State-, and would have opened the door for the lesser included charge of Manslaughter to be presented to the jury as an optional verdict the jury could reach. (In State v. King, 158 S.C. 251, 155 S.E. 409

ON SCENE WITNESSES:

Anna [REDACTED] states that she observed the victim and a b/m who was wearing a hooded sweatshirt w/ the hood over his head engaged in what she thought was an altercation with pushing and shoving. She then heard a shot and saw the victim run toward the front of the restaurant saying he had been shot. She said the other subject ran in the other direction. Brown said that at that time a dark sedan drove quickly pass the front of the business. (See: Statement).

Justin [REDACTED] was with witness Brown at the restaurant. He states he saw two b/ms engaged in what appeared to be a physical altercation. They were shoving each other. Afterwards he heard a gun shot and saw the victim running toward the sidewalk saying he was shot. He observed the other subject running through the parking lot. He was wearing a dark hooded sweatshirt and jeans.

Darius [REDACTED] is an employee at the Olive Garden. A formal statement was not taken from him at the time of the incident. However, he gave a verbal statement to Inv. Reese with the expectation of being contacted at a later date. Mitchell stated that he was dumping trash on the outside when he saw a light skin male run from the parking lot toward the "Baby R Us" store across an adjacent parking lot. He said the subject got into a silver Jeep Grand Cherokee (passenger side) and sped out of the parking lot.

Richland County Sheriff's Deputy Stone and CPD officer Eric walker pulled over silver Jeep Grand Cherokee in the Broad River Rd. area. It was driven by Jasmine Evins and also occupied by her friend Clauthia Davis. The vehicle was stopped because it matched the description of the possible suspect vehicle. The information was turned over to investigators for follow-up.

Inv. John VanOuten dumped the victim's cell home. The information revealed that the last several communications the victim had leading up to the shooting was from his cell phone to cell number 803-363-7542. It is unknown at this time the identity of the person with whom the victim spoke. A search warrant was secured for the number.

12-20-11: Inv. Mark Vinson ran the target number through the ASGDC Pay-Tell phone call system. It showed that at least one call was made from the jail to the target number on December 19, 2011 by someone calling him "Moo Moo". The person answering the target phone identified himself to the caller as "Snoop" and offered to help the call make contact with somebody. This is an indication of what may be the caller's street name. The call was recorded and placed in the case file.

Inv. K. E. Reese
Columbia Police Department
December 29th, 2011

Summary of Harbison Homicide

- Dec. 29, 2011, about 21:00hrs. a shooting occurred at 247 Habison Blvd.
- Victim Thomas Hoefler had received a couple of cell phone calls prior to the shooting and was talking with someone and giving the person directions to his location. He had been at the Olive Garden restaurant to celebrate his girlfriend's mother's birthday.
- Victim's girlfriend, Shaquana Outing, stated the victim was standing outside of the car when he told her he was going to the other side of the parking lot to speak to his "Homeboy". Within 3-5 minutes she heard a shot at which time the victim came back to the car saying he'd been shot. Outing immediately called 911. Officers arrived on the scene within minutes and determined the victim to have what appeared to be a gunshot wound to the chest. Paramedics arrived and transported the victim to a local hospital.
- CSI recovered at least 16 unspent 22.cal bullets spent 22. Cal shell casing. The victim's cell phone was also recovered. CSI also recovered and seized the victim's cell phone at the scene.
- * Several witnesses reported seeing the victim in what appeared to be a physical altercation with another b/m subject moments before the shooting. They described the other person as a b/m, light skinned and small in stature. One witness reports seeing the suspect run across the parking lot and get in the passenger side of silver colored Jeep Grand Cherokee.
- The victim died at the Lexington Medical Center.
- Richland County Sheriff's Deputy Stone and CPD officer Eric walker pulled over silver Jeep Grand Cherokee in the Broad River Rd. area. The vehicle was stopped because it matched the description of the possible suspect vehicle.
- Victim's cell phone was dumped and revealed the last number to communicate with him was 803- [REDACTED] This number becomes the target number to investigate.
- Inv. M. Vinson ran the target number through the ASGDC Pay-Tell system. It revealed that on Dec. 19, 2011, someone called this number from the jail facility. The person answering the phone identified himself as "Snoop".

(1930), the Court held that a jury charge was incorrect in that it did not clearly and correctly instruct the jury that, if they had a reasonable doubt as to whether the defendant was guilty of murder or manslaughter, it was their duty to resolve that doubt in his favor, and find him guilty of the lesser offense. The Court also held that a defendant who 'requests' a King charge is entitled to an appropriate jury instruction. State v. Robinson, --S.C.--, 414 S.E.2d 142 (1992)) A finding of guilt for Manslaughter by the jury would have subjected Applicant to a minimum of two(2) years and a maximum of thirty(30) years; while he faced a minimum of thirty(30) years and a maximum of Life for the Murder offense. Because the jury was not presented with the Manslaughter charge of law, Applicant was found guilty of Murder and sentenced to Life in prison without the possibility of parole.

Additionally, counsel was ineffective for giving Applicant bad advise that led to him waiving a Manslaughter charge of law to the jury. Tr. pg. 362 line 6- pg. 363 line 8. The waiver by Applicant must not be held to be voluntarily and intelligent. To begin, counsel was acting as Applicant's advocate against the charges the State prosecuted him, and it was counsel's duty to render the best representation he could provide to ensure the best outcome for Applicant. Competent counsel would have diligently pursued a Manslaughter conviction given the facts and circumstances of this case. However, Applicant's attorney erroneously advised him to waive the lesser included charge that would have benefitted him in receiving a lesser sentence. Furthermore, it is shown from the record that Applicant has minimum education Tr. pg. 76 line 15- pg. 77 line 22; pg. 307 line 4- pg. 308 line 3., which makes it

clear he relied strongly on the advise provided to him by counsel. Had counsel informed him of the ramifications he faced when ommitting the lesser charge of law to the jury, he would not had waived it. Even more so, had counsel informed him it would have been in his best interest to request the lesser included charge of law, he would have asked the court to give the instruction to the jury when he was addressed by the judge.

CONCLUSION

Trial counsel was ineffective for failing to present evidence that corroborated Applicant's version of events and supported a lesser included charge; and for erroneously advising him to waive a Manslaughter charge of law to the jury. Counsel's deficient performance had a detrimental effect on the outcome of Applicant's trial proceeding to the extent that effected the amount of time he received. Applicant requests that the court will vacate his conviction and remand his case for a new trial.

s/ _____
Gonzales Wardlaw #343782

iv. _____

(d) the date of each such disposition:

i. N/Pii. +iii. +

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/Aii. +iii. +

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NAii. +

iii. _____

(b) the proceedings in which each ground was raised:

i. N/Aii. +

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Counsel is not cognizable on(b) Direct Appeal. Such claims must be raised on PCR.

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NA
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Elizabeth C. Fullwood/Lexington Public Defender Office 401 1/2 W. Main St.
Lexington, S.C. 29072
- ii. David Alexander/ P.O. Box. 11589, Columbia, S.C. 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Ms. Fullwood represented me at trial.
- ii. Mr. Alexander represented me on Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate Conviction and Remand for New Trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James W. Wadlow ✓

SWORN to and subscribed before me this 19th
day of August, 2011.

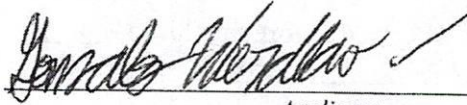
Nancy C. Moulton (L.S.)
Notary Public

My Commission Expires: 1-23-2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

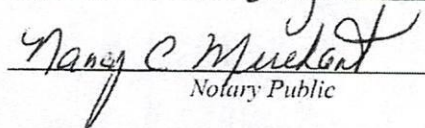
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
19th day of August, 2015.



Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Gonzales Wardlaw,	)	C.A. No. 2015-CP-32-02990
S.C.D.C. No. 343782,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed August 25, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the June 2012 term of the Lexington County Grand Jury for Murder (2012-GS-32-01261). He was represented by Elizabeth C. Fullwood, Esquire. On February 10, 2014, Applicant proceeded to trial pursuant to which he was found guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to imprisonment for Life without Parole.

A timely notice of appeal was filed and perfected on Applicant's behalf. David Alexander, Esq., represented Applicant on appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Wardlaw, 2015-UP-296 (Filed on June 17, 2015). The Remittitur was issued on July 6, 2015.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel, violation of Sixth Amendment U.S. Constitution"
 - a. "Trial attorney failed to present evidence that showed it was a struggle between Applicant and Victim that resulted in the Victim being shot;"
 - b. "[F]ailing to adequately inform Applicant of the ramifications he faced when advising him to waive a manslaughter charge of law to the jury"
 - c. "[F]ailing to subpoena the three witnesses to court that gave written and verbal statements saying the[y] observed Applicant and the Victim engaged in a pushing and shoving match that resulted in Victim getting shot."

On or about September 29, 2015, Applicant, prior to being appointed counsel, filed a document entitled "Memorandum of Law in Support of Application for Post Conviction Relief," which Respondent treats as an amendment to Applicant's PCR application. In the amendment, Applicant alleges he is being held in custody unlawfully for the following reasons:

- "[A]pplicant was denied the right to effective assistance of trial counsel by counsel's failure to move for suppression of 'rap lyrics' seized in violation of Fo[u]rth Amendment requirements of a search incident to arrest."
- "[A]pplicant was denied the right to effective assistance of trial counsel by counsel's failure to object to solicitor's failure to disclose exculpatory evidence upon request by the defense."
- "[A]pplicant was denied the right to effective assistance of trial counsel by counsel's failure to object to police officer's retrieval of information from his cell phone without a search warrant."
- "[A]pplicant was denied the right to effective assistance of trial counsel by counsel's failure to object to solicitor[']s failure to provide the defense any copy of the search warrant authorizing PTA-FLA (clear talk) service to extract information from his cell phone."
- "[A]pplicant was denied the right to effective assistance of trial counsel by counsel's failure to object to the judge's erroneous and incomplete jury charge on the inference of malice."

On or about February 9, 2016, Applicant, prior to being appointed counsel, submitted a document entitled "Memorandum of Law in Support of Application for Post Conviction Relief," which Respondent treats as an amendment to Applicant's PCR application. In the amendment, Applicant alleges he is being held in custody unlawfully for the following reasons:

- “[A]pplicant was denied the right to effective assistance of trial counsel by counsel’s failure to move for suppression of ‘rap lyrics’ seized in violation of Fo[u]rth Amendment requirements of a search incident to arrest.”
- “[A]pplicant was denied the right to effective assistance of trial counsel by counsel’s failure to object to solicitor[’]s failure to disclose exculpatory evidence upon request by the defense.”
- “[A]pplicant was denied the right to effective assistance of trial counsel by counsel’s failure to object to the judge’s erroneous and incomplete jury charge on the inference of malice.”
- “Trial counsel was ineffective for failing to object to the prosecution mis-conduct [sic] by allowing him to shift the burden of proof.”
- “Trial counsel was ineffective for failing to object to the judge[’]s impermissible [sic] charge on the facts to the jury.”
- “Trial counsel was ineffective for failing to request a hearing to see if I had competence to stand trial.”

Attached to this return and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject trial, records from the South Carolina Department of Corrections, Applicant’s PCR application and amended allegations, the Record on Appeal, and Applicant’s appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits that Applicant’s claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process” that the plea proceedings “cannot be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRPC. All claims should be made well in advance of the PCR hearing. Because Applicant has been

appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and filings by Applicant will not be considered at the PCR hearing. See Rule 11, SCRCF. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCF.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

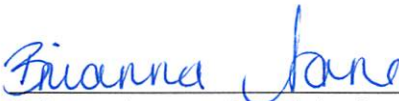
16 Nov., 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2015-CP-32-02990
GONZALES WARDLAW, #343782,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
PO Box 11961
Columbia, SC 29211

DATED this 16th day of November, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

ORIGINAL

JC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTONIN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-32-02990

GONZALES WARDLAW, #343782,)

Applicant,

-v-

State of South Carolina,

Respondent.

AMENDED APPLICATION
FOR
POST-CONVICTION RELIEF

COMES NOW, Applicant Gonzales Wardlaw, by and through his undersigned attorney, pursuant to S.C. Code Ann. § 17-27-70(a), and amends¹ the application originally and timely filed August 25, 2015.

1. Place of Detention: Perry Correctional Institution.
2. Name and location of Court which imposed sentence: Lexington County General Sessions
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012-GS-32-1261-Murder
5. The date upon which sentence was imposed and the terms of the sentence:
(a) February 14, 2014, ji90- Life without the Possibility of Parole
6. Check whether a finding of guilty was made:
(b) after a plea of Not Guilty
7. Did you appeal from the judgment or the imposition of sentence? Yes
8. If you answered "yes" to (7) list:
(a) The name of each court to which you appealed: South Carolina Court of Appeals

2018 AUG -2 AM 9:27
LISA H. COHER
CLERK OF COURT
LEXINGTON SC

FILED

¹ Amendments are bolded

(b) Result: Affirmed convictions and sentences

(c) Order filed June 17, 2015

(d) Unpublished opinion No. 2015-UP-296

9. If you answered "no" to (7) state your reasons for not so appealing: N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (in addition to the constitutional arguments previously asserted):

(a) Ineffective assistance of trial counsel for failing to object to improper and prejudicial judicial comments during opening remarks;

(b) Ineffective assistance of trial counsel for failing to request and review all discovery materials and request testing of certain items;

(c) Prosecutorial Misconduct for failing to present the complete evidence to defense counsel;

(d) Ineffective assistance of trial counsel for failing to investigate and present evidence of decedent's prior violence including intoxication of the decedent;

(e) Ineffective assistance of trial counsel for failing to request an expert in forensic psychology to evaluate and present evidence of the failure to tell story to police and explain the rap lyrics;

(f) Ineffective assistance of trial counsel for failing argue and preserve the search warrant suppression issues;

(g) Ineffective assistance of trial counsel for failing to subpoena and present witnesses to corroborate Defendant's testimony;

(h) Ineffective assistance of trial counsel for failing to obtain an expert to independently examine the cell phone evidence and challenge the certainty of State's cell phone forensic expert;

(i) Ineffective assistance of trial counsel in failing to investigate and present the testimony of scientific forensic evidence;

(j) Ineffective assistance of trial counsel for failing to request , examine, and present records to prepare for cross-examination and impeachment purposes;

- (k) Ineffective assistance of trial counsel for failing object to presentation of unauthenticated social media evidence;
 - (l) Ineffective assistance of trial counsel for failing to object to and preserve issue for appeal regarding the impermissible testimony by expert and lay witnesses;
 - (m) Ineffective assistance of trial counsel for failing to impeach lay witnesses;
 - (n) Ineffective assistance of trial counsel for failing to request and preserve objections regarding jury charges; and;
 - (o) Ineffective assistance of appellate counsel for failing to raise and brief issues a, l, and n above on direct appeal.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective assistance of trial counsel for failing to object to improper and prejudicial judicial comments during opening remarks: this allegation refers to comments regarding the jury's (1) "search for truth and justice" (2) "fair and just verdict" (3) and "true facts" all in violation of *State v. Daniels*, 737 S.E.2d 473, 401 SC 251, (2012) and raise or preserve the issue later decided in *State v. Beatty*, Op. No. 27693 (S.C. Sup. Ct. filed Dec. 29, 2016) (Shearouse 2017 Adv. Sh. No. 1 at 13) and Refiled April 25, 2018;
 - (b) Ineffective assistance of trial counsel for failing to request and review all discovery materials and request testing of certain items; a portion of this argument will be presented or withdrawn after the supplemental discovery hearing, items such as the 911 calls and GSR and DNA testing are the main focus of this ground;
 - (c) Prosecutorial Misconduct for failing to present the complete evidence to defense counsel; items such as the 911 calls and GSR and DNA testing as well as complete recorded interviews and surveillance recordings, notes, and confidential informants are the main focus of this ground;
 - (d) Ineffective assistance of trial counsel for failing to investigate and present evidence of decedent's prior violence including intoxication of the decedent; as referenced in the discovery provided and provided by the rule 608/609 and the like;
 - (e) Ineffective assistance of trial counsel for failing to request an expert in forensic psychology to evaluate and present evidence of the failure to tell story to police and explain the rap lyrics, a portion of this argument will be presented or withdrawn after the supplemental discovery hearing and funding allotment;